



## OTHER FISCAL ISSUES

---

### INTRODUCTION

This section discusses several fiscal issues not directly related to the executive budget, but that will potentially have an impact on the budget passed by the legislature and/or the budget process. The purpose of this section is to provide legislators with an overview of each of these issues. The issues discussed in this section are listed below and are discussed in more detail in the pages that follow.

- **K-12 Lawsuit Issue.** The April 2004 district court decision that the school funding methodology is unconstitutional and that state funding is inadequate was upheld in November 2004 by the Supreme Court. The state is directed by the court to find a solution by October 2005.
- **Other Litigation Issues.**
  - *Human Services.* Two lawsuits allege deficiencies in services provided to the developmentally disabled. One is still in the courts. For the other, a court ordered settlement was signed in February 2004.
  - *Highway Patrol Class Action Lawsuit.* A lawsuit by 323 officers seeks overtime pay for all lunch hours for a period of 3½ years, and to have overtime and retirement contributions and benefits recalculated. A second lawsuit regarding wage claims was filed by 16 officers. A settlement agreement has been signed for both cases.
  - *PPL Protested Taxes.* Legislation is proposed that transfers half of property taxes, paid in protest and deposited in the general fund, to a separate account to be available for refund if necessary.
- **Tobacco Settlement Funds.** The state expects to receive \$42.1 million in the 2007 biennium, at least 40 percent of which will be deposited into a trust. Another 49 percent was earmarked for specific purposes. The general fund receives 11 percent.
- **I-149: Cigarette and Tobacco Tax Increases.** Initiative 149, passed by the voters in November 2004, is estimated to increase tax revenues by nearly \$40 million each year of the 2007 biennium.
- **Jobs and Growth.** The Jobs and Growth Tax Relief Act of 2003, legislation passed by Congress to provide fiscal assistance to the states, consisted of two types of fiscal relief: 1) a temporary increase in the federal Medicaid benefits participation rate; and 2) a grant of \$50 million.
- **Public Defender Study.** There is legislation being proposed to create a statewide public defender system.
- **District Court Assumption.** The executive budget request includes a supplemental for FY 2005. In addition, the Judiciary is seeking additional funding for the 2007 biennium.
- **Medicare Modernization Act.** Despite state and federal implementation issues, outpatient drug assistance is a significant benefit for Medicare beneficiaries.

- **Long-Term Stability of General Fund.** Since the general fund is critical to the operations of state government, the long-term stability of this account is an issue that must be examined for development of sound fiscal policies.
- **Statutory Appropriations.** Expenditures from statutory appropriations in the 2007 biennium are estimated at \$268.7 million, of which \$170 million is for entitlement payments to local government.
- **General Fund Transfers.** Transfers from the general fund to other funds in the 2007 biennium are \$41.2 million. A 30 percent increase in these transfers over the 2005 biennium is due primarily to an increase in U.S. mineral royalties, part of which is transferred to a special revenue account for distribution to eligible counties.
- **Fund Balance Adequacy/Reserves.** With the experiences of the current biennium still fresh, the legislature will need to determine what amount of ending fund balance is sufficient to ensure budget stability, particularly with the uncertainties of Montana's revenue stream and the overall economic outlook.
- **Other Major Funds.**
  - *Highway Special Revenue Account.* The 2005 Legislature is faced with a declining working capital balance in the highways state special revenue account
  - *Resource Indemnity Account.* Of seven accounts that have historically received portions of RIT allocations or interest earnings, two are projected to have negative balances by the end of the 2007 biennium

## K-12 LAWSUIT ISSUE

### INTRODUCTION

In October 2003, a coalition of 11 school districts, 4 organizations of school boards, teachers and administrators, and 7 parents filed suit against the state of Montana alleging that the state has failed to provide sufficient and equitable funding to school districts, and therefore the school funding system is unconstitutional. The plaintiffs alleged that the current funding system violates both Section 2 and Section 3 of Article X of the Montana Constitution. These sections state:

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

The case, *Columbia Falls v Montana*, was heard in January 2004 in Helena and on April 15th Judge Sherlock delivered his opinion. The Sherlock decision found the state's share of school district spending inadequate, and found that Montana's funding formula is not reasonably related to the costs of providing a basic system of free quality public elementary and secondary schools. The case was appealed to the Montana Supreme Court in June 2004. In November 2004, the Montana Supreme Court affirmed the Sherlock opinion.

### BACKGROUND INFORMATION

### THE LAWSUIT - COLUMBIA FALLS V. STATE OF MONTANA

#### *Plaintiffs Argument*

During District Court hearings under Judge Jeffery Sherlock in early 2004, the plaintiffs argued that the state's system of funding schools in Montana was inadequate and distributed inequitably. The plaintiffs asked, that the court provide declaratory and injunctive relief, compelling the State of Montana to:

1. Study and determine the components of free quality public elementary and secondary education;
2. Study and determine the costs of delivering that quality education to all students in Montana, including costs that vary based on student or district characteristics;
3. Implement a funding system that is based on educationally relevant factors and tailored to meet the costs of delivering a quality education;
4. Fully fund, and equitably distribute, the State's share of the cost of the public elementary and secondary school system;
5. Include a cost adjustment factor in the funding system; and
6. Establish a mechanism for periodic monitoring of and adjustment to the funding system to assure it reflects current costs of delivering quality education, and to prevent a recurrence of the historical trends of declining state support and failure to keep pace with increasing costs<sup>3</sup>.

---

<sup>3</sup> Complaint in *Columbia Falls v. State of Montana*, Molloy and Gallik, October 9, 2003, pg 15.

## ***Court Findings***

Judge Sherlock delivered his opinion on April 15th, 2004. The Sherlock opinion contained 199 findings of fact and several conclusions of law. Two of the most important follow:

Finding160. In sum evidence of the state's failure to adequately fund its share of the elementary and secondary school system in Montana is evidenced by the following:

1. The growing number of school districts budgeting at or near their maximum budget authority;
2. The increasing number of schools with accreditation problems;
3. The difficulty in attracting and retaining teachers, which is based to a large degree, on the decreasing salaries and benefits that are offered to Montana teachers compared to their counterparts in the United States;
4. The large number of programs that have been cut in recent years as evidenced by the testimony of numerous superintendents;
5. The increasing difficulties that schools are having constructing safe and adequate buildings or maintaining the code compliance of the buildings that currently exist;
6. The increasing competition for general fund dollars between special education and regular education, which lowers the available money to students in regular education programs;
7. The results of an Augenblick and Myers Study;
8. The testimony of various superintendents that, if they were forced to provide their educational programs at the BASE general fund amount, they could not meet accreditation standards or offer a quality educational program;
9. The declining share of the State's contribution to the general fund budget of Montana's school districts;
10. The fact that Montana's funding formula is not reasonably related to the costs of providing a basic system of quality public elementary and secondary schools. Further, it is clear that the current funding system was not based on a study of the funding necessary to meet what the state and federal governments expect of Montana's schools;
11. The fact that the Montana Supreme Court has stated that it is the State's obligation to adequately fund its share of the school financing formula (Helena Elementary I, 236 Mont. at 55, 769 P.2d at 690);
12. The fact that the Montana Supreme Court noted that "[i]n 1972, when our Constitutional Convention met, approximately 65% of General Fund revenues were funded through the Foundation Program."

Finding 195. In this finding, the Sherlock opinion states:

"195. A particular requirement is that the funding system must be based on educationally-relevant factors. This requires that the funding system be based on the costs of meeting the standards that govern the operation of Montana's schools. Once adequate levels of funding are determined, the State must then fund its share of the cost of the system. The State's share must be an amount that is adequate at the BASE or foundation levels to allow districts to meet the standards. As previously established, this applies not only to general funds, but to the overall costs of the elementary and

secondary system. In accomplishing this, it would be appropriate for the State to include a reasonable phase-in plan for implementing a new funding system<sup>4</sup>.”

The court rejected the plaintiff’s contention that the system was inequitably funded.

## ***Court Conclusions***

In the Conclusions of Law and Order, Sherlock wrote:

“7. ...there is no question that the current funding system is not reasonable, since the overwhelming evidence supports Plaintiffs’ contention that the funding system and the classifications contained therein are not based on educationally-relevant factors.

8. This Court hereby rules that the current state funding system violates Article X, Section 1(2) of the Montana Constitution in that the State has failed to recognize the distinct and unique cultural heritage of American Indians and has shown no commitment in its educational goals to the preservation of their cultural identity.

9. This Court hereby rules that the current Montana school funding system violates Article X, Section 1 of the Montana Constitution in that it fails to provide adequate funding for Montana’s public schools.

10. This Court further rules that the State of Montana has violated Article X, Section 1 of the Montana Constitution in that the State is not paying its share of the cost of the basic elementary and secondary school system.

11. With respect to Montana’s accreditation standards, this Court concludes that certain Conclusions of Law found by the Montana Supreme Court in *Helena Elementary I* remain accurate to this day. “Thus, the Montana School Accreditation Standards do not fully define either the constitutional rights of students or the constitutional responsibilities of the State of Montana for funding its public elementary and secondary schools.” 236 Mont. at 52, 769 P.2d at 692.

12. This Court takes into account the fact that some of the damage that the educators testified to at trial is prospective in nature. However, this evidence is persuasive and relevant. Just as the Montana Supreme Court did not feel it necessary to wait for “dead fish [to] float on the surface of our state’s rivers and streams before its farsighted environmental protections can be invoked” (MEIC, 77), this Court finds that it should not have to wait until Montana’s school system collapses in financial ruin prior to entering an order in this case.

13. To satisfy the Montana Constitution, the State’s school finance system must be based upon determination of the needs and costs of the public school system, and the school finance system must be designed and based upon educationally-relevant factors<sup>5</sup>”.

## ***State Appeal***

In June, the State appealed the decision to the Supreme Court. On August 9, 2004, the State presented its brief in the case to the Supreme Court. The brief argued that the claims of the plaintiffs in *Columbia Falls v. Montana* present non-justiciable political questions, and that the district court erroneously declared Montana’s school funding system unconstitutional beyond a reasonable doubt

---

<sup>4</sup> Findings and Fact, Conclusion of Law and Order, Judge Sherlock, First Judicial District Court, in *Columbia Falls v. State of Montana*, April 15<sup>th</sup>, 2004.

<sup>5</sup> IBID, pgs 50-51.

when it ignored or failed to distinguish countervailing evidence<sup>6</sup>. On August 30, 2004, the plaintiffs' reply disputed the political question and asserted that the district court correctly rejected the State's factual defenses. In addition, the reply contained a cross-appeal brief in which the plaintiffs argued that the Sherlock decision on the equity question was erroneously decided (does the current system violate equal protection guarantees). The plaintiffs' reply also requested that the effective date by which a new funding scheme be in place be advanced from October 1, 2005 (as in the Sherlock Decision) to May 1, 2005, in time to provide relief to the school system for the 2005-06 school year<sup>7</sup>.

### ***Supreme Court Decision***

In November 2004, the Supreme Court issued an abbreviated decision unanimously affirming the primary tenets of the Sherlock decision. The Court concluded that the question of adequate school funding is a justiciable question. The Court said "we affirm the District Court's conclusion that the current system, which has evolved without the benefit of any definition of what constitutes "quality", fails to adequately fund Montana's public schools. We do not, however, necessarily affirm everything that is said in the District Court's opinion..."

The court also affirmed the District Court conclusion that the state has failed to recognize the distinct and unique cultural heritage of American Indians and has shown no commitment in its education goals to the preservation of Indian cultural identity.

Finally, the court affirmed the District Court's selection of October 1, 2005 as the effective date of its order.

The Supreme Court will publish its final in-depth conclusions sometime after January 1, 2005.

## **RECOMMENDATIONS**

The conclusion of the District Court and the Supreme Court is that until such time as the legislature assesses education needs and defines "quality", it is not in a position to construct a funding system rationally related to educationally relevant factors.

As a result, staff recommends the legislature do the following:

- Define the educationally relevant elements of a basic system of free quality public elementary and secondary schools
- Determine the costs of delivering the resources required by that system for both operating and capital expenses
- Devise a funding formula in law that will determine the state's share of school districts' resources
- Determine what state and district revenues will be required to pay for the system
- Devise a periodic review process of the system to insure it meets future educational needs

If the legislature follows these recommendations, it should involve the Board of Public Education

---

<sup>6</sup> Brief of Appellant to the Montana Supreme Court in Columbia Falls v. State of Montana, McGrath and Morris, August 9, 2004.

<sup>7</sup> Respondents Answer and Cross Appeal Brief to the Montana Supreme Court, in Columbia Falls v. State of Montana, Molloy and Gallik, August 30, 2004.

because of its general supervision of the public school system and in crafting the accreditation standards and teacher licensure rules. A major issue will be who sets the standards, the legislature or the Board.

A 1992 district court decision found that the Board of Public Education is vested with constitutional rule-making authority. This ruling was never appealed to the Supreme Court. The chief counsel to the legislature has stated that this ruling is challengeable by the legislature because the Constitution gives the legislature sole powers to appropriate money from the treasury, and if the Board may promulgate standards for which the state must appropriate more money, then the powers of each body is in conflict.

Other constitutional entities that need to be involved in the school funding remedy will be local school boards. Article X, Section 8 of the Montana Constitution states: "The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law." The association of Montana school boards was a plaintiff in the Columbia Falls suit. The remedy crafted by the legislature will need to be cognitive of the local control of schools guaranteed in the Constitution.

In developing a remedy, the legislature may want to consider to what extent a costing study would be helpful. There are many kinds of studies to choose from and many firms that provide services in this capacity. Caution is encouraged in selecting a cost study, as it is a highly subjective process, and past results in other states have revealed a checkered history. The cost of using nationally recognized firms to conduct a study may be between \$200,000 and \$500,000. Many of these studies have been done in other states. The duration of most studies is usually six months.

If a study is completed, a funding formula that determines the state share and the local share of education funding will also have to be crafted. This may involve the creation of new entitlement factors for which no data is currently collected. If this is the case, the Office of Public Instruction may be required to accomplish new tasks that may require additional funding.

If a study is not desired, the legislature may want to consider the recommendations of the Montana K-12 Renewal Commission. The Renewal Commission was established by HB 736 in the 2003 session. Its recommendations include 13 proposals to develop a quality education system in Montana, involving full day kindergarten, more support for special needs, gifted and talented, and native American students, regionalization of services, removal of barriers to consolidation, insurance pooling, and more equalized state aid for the district general fund, and more support for quality infrastructure.

## OTHER LITIGATION ISSUES

### **PUBLIC HEALTH AND HUMAN SERVICES – TRAVIS D.**

The Travis D. litigation was a class action lawsuit filed by the Montana Advocacy Program (MAP) in 1996 on behalf of individuals with developmental disabilities. On February 5, 2004 a court ordered settlement agreement of this litigation was signed. This settlement agreement contains a number of provisions specific to the developmental disabilities system. In addition to the impact of the settlement agreement on budgetary and public policy related to the developmental disabilities system, it also has potential impacts (budgetary and public policy) on other disability systems. These impacts, issues, and related executive budget requests are discussed in the 2005 Biennium LFD Budget Analysis, Volume 3 for the Department of Public Health and Human Services, pages B-15 and B-30.

### **PUBLIC HEALTH AND HUMAN SERVICES - M.A.I.D.S. LAWSUIT**

In September 2002, the Montana Association for Independent Disability Services, Inc. (MAIDS) and several individuals with developmental disabilities filed suit. The plaintiffs allege that several statutory and constitutional provisions have been violated and seek: 1) to have the wage and benefit disparity between employees of state run institutions and community providers eliminated; and 2) to have uniform Medicaid reimbursement rates established. The court is scheduled to hear this lawsuit in August of 2005.

A finding in favor of the plaintiffs and requiring the state to reimburse contractors at a level that provides direct care wage rates that are comparable to state employees would likely have a financial impact on the developmental disabilities system that would be measured in terms of millions of dollars. The potential for similarly situated contractors to file similar legal actions exist. Furthermore, how findings favoring the plaintiffs might impact the definition of employee/employer relationships and other aspects of labor relations and compensation has not been studied.

### **HIGHWAY PATROL CLASS ACTION LAWSUIT**

There was a settlement agreement signed on December 10, 2004 by the state of Montana and the parties representing two lawsuits filed against the state. The first lawsuit is named Swingley, et al. v. Montana Highway Patrol that was filed in district court in the state of Montana. This lawsuit is an administrative wage claim brought to court by certain highway patrol officers for overtime hours. This is a class action lawsuit that includes 323 officers. The case sought overtime compensation for all lunch hours for a period of 3 ½ years and seeks to have overtime and retirement contributions and benefits recalculated based on the contention that subsistence pay, which was to cover meals, travel, uniform maintenance and home telephone for each officer, should have been included in the officers' base pay. The settlement amount for this case was \$7,650,000.

The second lawsuit is named Babinecz et al. v. Montana Highway Patrol that was filed in district court in the state of Montana. This lawsuit is also for certain wage claims brought to court by 16 highway patrol officers. The settlement amount for this case was \$850,000.

Payments will require an affirmative act of the legislature.



## CENTRALLY ASSESSED PROTESTED PROPERTY TAXES

Pennsylvania Power and Light (PPL) has protested at least a share of their property taxes every year since tax year 2000. Before the passage of SB 294 during the 2003 session, these taxes were paid into an escrow account and were unavailable for use by the state, local governments, and schools. SB 294 allows the state share of these taxes to be deposited into the general fund for support of governmental services. As of the end of FY 2004, a total of \$5.6 million in protested taxes was deposited in the general fund. It is expected that an additional \$2.6 million will be deposited in FY 2005.

The PPL case is before the State Tax Appeal Board (STAB), which may rule this winter. Regardless of STAB's ruling, this case is likely to be appealed in district court and may take some time to work its way through the court system. There is little risk that the state will lose these funds during the 2005 biennium. However, if STAB rules against the state, there is a distinct possibility refunds would be required during the 2007 biennium.

Due to the uncertainty of this issue, the executive proposes legislation to transfer half of the protested property tax payments (up to a maximum of \$4.0 million) currently in the general fund into a state special revenue account. Money in this account would be used to pay any refunds to companies that are successful in the appeal process.

### LFD COMMENT

Senate Bill 294 passed by the 58th Legislature was designed to release centrally assessed protested property taxes that were deposited into a local government escrow account. For local governments, this provided access to the funds while the protest process worked its way through the appeal process. The executive is now proposing to create a state \$4.0 million reserve account to pay unexpected state refunds. It would be more prudent and simpler for the state to merely deposit its share of these protested taxes into a state special escrow account, including, the amounts currently in the general fund. As the protested cases are resolved, the funds in the escrow account are either refunded to the taxpayer or transferred to the state general fund.

## TOBACCO SETTLEMENT FUNDS

Montana receives revenue as a settling party to a master settlement agreement (MSA) with four original tobacco companies and 43 subsequent companies that ended a four-year legal battle that included 46 states and 6 other entities. Currently, Montana is eligible for two types of payment: 1) on-going annual payments (to be received April 15th); and 2) strategic contribution payments (from FY 2008 through FY 2017). The MSA places no restrictions on how states are to spend the money.

### REVENUE

The total amount of tobacco settlement funds available to Montana may be affected by a number of adjustments. The three most important are the adjustments for inflation, volume of cigarettes shipped nationally, and participating manufacturers' loss of market share. Montana's annual share will increase by a minimum amount of 3 percent or more if inflation is greater than 3 percent. The amount will decrease if the number of cigarettes shipped nationally decreases and will increase if the number increases. Proceeds are reduced if it is proven that participating manufacturers have lost a significant portion of market share due to disadvantages caused by the MSA (participating manufacturers did lose market share in 2003). Figure 1 shows the revenue Montana has received through FY 2004 and amounts expected in FY 2005-2007, as estimated by the Revenue and Transportation Interim Committee. Revenues decline due to reductions required in the MSA, declines in the number of cigarettes shipped nationally, and anticipation that participating manufacturers will withhold a portion of their payments in the 2007 biennium until the cause of the loss of market share is proven. Based on testimony from the Montana attorney general staff, the Revenue and Transportation Interim Committee decided to include in the legislature's revenue estimates a reduction in revenue caused by the loss of participating manufacturers' market shares.

Figure 1								
Tobacco Settlement and Tobacco Trust								
Revenues and Distributions-2007 Biennium								
Tobacco Settlement Revenue Allocations						Tobacco Trust Interest Earnings Allocations		
Current Distribution %	11%	40%	State Special Revenue		100%	90%	10%	100%
Fiscal Year	General Fund	Trust Fund	32% Treat/Prevention	17% CHIPS, CHA	Total	State Special	Tobacco Trust	Total
2000 Actual	\$34,804,411	\$0	\$0	\$0	\$34,804,411	\$0	\$0	\$0
2001 Actual*	15,989,101	10,650,750	0	0	26,639,851	98,519	71,172	169,691
2002 Actual	18,647,411	12,431,607	0	0	31,079,018	1,015,407	22,212	1,037,619
2003 Actual	18,699,611	12,466,407	0	0	31,166,018	1,647,194	160,832	1,808,027
2004 Actual**	2,933,928	10,668,829	8,535,063	4,534,252	26,672,073	2,402,846	266,983	2,669,829
2005 Estimate	2,871,220	10,440,800	8,352,640	4,437,340	26,102,000	2,810,700	312,300	3,123,000
2006 Estimate	2,319,240	8,433,600	6,746,880	3,584,280	21,084,000	3,338,100	370,900	3,709,000
2007 Estimate	<u>2,308,680</u>	<u>8,395,200</u>	<u>6,716,160</u>	<u>3,567,960</u>	<u>20,988,000</u>	<u>3,807,000</u>	<u>423,000</u>	<u>4,230,000</u>
Totals	\$98,573,602	\$73,487,194	\$30,350,743	\$16,123,832	\$218,535,372	\$15,119,765	\$1,627,399	\$16,747,165

\* In addition, \$1,143 general fund was recorded as prior year revenue.

\*\* In addition, \$22,189 of interest to the trust was recorded as prior year revenue.

### DISTRIBUTION

In FY 2000, the revenue received from the MSA was deposited to the general fund. However, due to passage of Montana Constitutional Amendment 35 by the electorate in November 2000, beginning in January 2001, the legislature was required to dedicate not less than 40 percent of tobacco settlement

money to a permanent tobacco trust fund. Since the legislature has not yet specified in statute the exact percentage to be distributed to the tobacco trust fund, the revenue estimates assume 40 percent. From July 2000 to June 2003, 60 percent of the money was deposited into the general fund. Due to passage of Initiative 146 by the electorate in November 2002, beginning July 2003, 32 percent of the total tobacco settlement money funds tobacco prevention/cessation programs, and 17 percent of the total funds the Children's Health Insurance Program and programs of the Comprehensive Health Association (CHA). SB 485 (17-6-606, MCA), enacted by the 2003 legislature, allows the 32 percent allocation to be used for human service programs and the 17 percent allocation to be used to match federal Medicaid money. These allowances terminate the end of June 2005. Money from both allocations can be used for tobacco disease prevention and to fund the Tobacco Prevention Advisory Board. Money not appropriated within two years is transferred to the tobacco trust fund. The remaining 11 percent of the MSA money is deposited to the general fund. SB 485 authorized the transfer of \$5.8 million in FY 2004 and \$6.1 million in FY 2005 from the account receiving the 32 percent allocation to a newly created prevention and stabilization state special revenue account. Figure 1 also shows actual settlement amounts distributed to the general fund, tobacco trust fund, and state special revenue accounts through FY 2004 and the amounts estimated to be distributed in FY 2005-2007.

### ***Executive Budget Recommendations***

The executive is proposing legislation (LC 126) to make the temporary amendments (to 17-6-606, MCA) enacted in SB 485 by the 2003 legislature permanent beginning FY 2006. If enacted by the legislature as proposed:

- Money in the tobacco prevention and control account (32 percent allocation) can be used to fund human services programs in addition to the current law uses
- Money in the CHIP/MCHA account (17 percent allocation) can be used to match federal Medicaid funds in addition to the current law uses
- A portion equal to the amount appropriated from the prevention and stabilization account is transferred to that account from the account receiving the 32 percent allocation of tobacco settlement funds. The transferred amount must be used to fund human services programs.

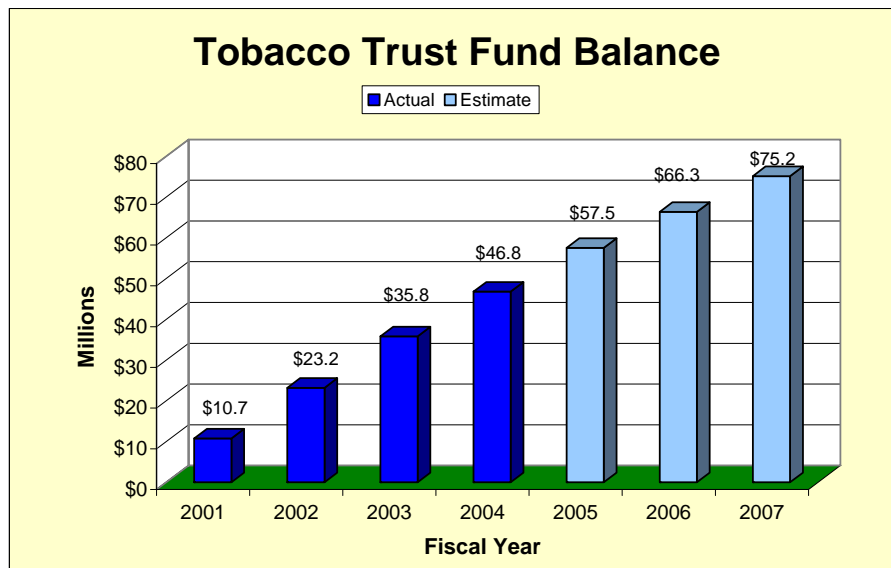
Please see related issues beginning on page B-27 in Volume 3 of the Legislative Budget Analysis 2007 Biennium:

- Fiscal 2005 appropriations of interest earnings from the tobacco settlement trust fund exceed estimated revenues in fiscal 2005
- Fiscal 2005 appropriations and executive requested appropriations from the CHIP/MCHA account (17 percent allocation) exceed estimated revenues in FY 2005-2007
- If the legislature approves the proposed legislation, reductions in appropriations from the prevention and stabilization account would be needed to ensure appropriations do not exceed estimated revenues--if the legislature does not approve the proposed legislation, changes in the source of funding for requested expenditures or reductions in services must be considered

## TOBACCO TRUST FUND

As stipulated in the Montana Constitution, interest earnings from the tobacco trust are to be distributed: 1) 90 percent for appropriation by the legislature for disease prevention programs and state programs providing benefits, services, or coverage related to the health care needs of the people of Montana; and 2) 10 percent to the tobacco trust. Money in the tobacco trust can be spent if approved by 2/3 of each house of the legislature. Appropriations of principal, income, or interest from the trust fund cannot be

Figure 2



used to replace state or federal money that supports tobacco disease prevention programs that existed on December 31, 1999. The tobacco trust fund began receiving deposits of settlement proceeds and interest earnings in FY 2001. Figure 2 shows the fiscal year end fund balances through FY 2004 and the balances estimated by the legislature for FY 2005-2007.

# CIGARETTE & TOBACCO TAX INCREASE – INITIATIVE NO. 149

## INTRODUCTION

On November 2, 2004, the electorate adopted the cigarette and tobacco tax increase contained in Initiative 149 (I-149). This initiative increases the tax on all tobacco products (cigarettes, moist snuff, and other tobacco products) and also changes the distribution of the tax proceeds.

The tax rate on cigarettes is increased from \$0.70 per 20-count pack to \$1.70 per pack, or an increase of 142.9 percent. The tax on moist snuff is also increased from \$0.50 per ounce to \$0.85 per ounce for an increase of 70.0 percent. The tax on all other tobacco products is increased from 25 percent of the value of the commodity to 50 percent of the value, or a 100 percent increase. The effective date of the initiative is January 1, 2005, and applies to all tobacco products received by wholesalers after December 21, 2004. Figure 3 compares the tax rates under the old law versus the new law.

**Figure 3**  
Cigarette and Tobacco Tax Rates  
Old Law vs. New Law

Commodity	Unit	Old Law Tax Rate	New Law Tax Rate	Change	Percent Change
Cigarette Tax	Per 20 Count Pack	\$0.70	\$1.70	\$1.00	142.9%
Moist Snuff Tax	Per Ounce	\$0.50	\$0.85	\$0.35	70.0%
Other Tobacco Products	Per Value	25.0%	50.0%	25.0%	100.0%

## ESTIMATED REVENUE

The estimated revenue collections shown in Figure 4 are based on the assumptions adopted by the Revenue and Transportation Interim Committee (RTIC) on November 16, 2004. The assumptions used in estimating tobacco taxes included cigarette and tobacco consumption, the change in this consumption due to the increase in the tax rates, and the tribal revenue sharing agreements. The consumption estimates (prior to I-149) were based on Montana adult population and the historical consumption decline rates.

**Figure 4**  
Cigarette and Tobacco Tax Revenue Estimates  
Based on Revenue & Transportation Interim Committee Assumptions  
Old Law vs. New Law / Fiscal 2005, 2006, 2007  
In Millions

	FY 2005 Old Law	FY 2005 New Law	FY 2006 Old Law	FY 2006 New Law	FY 2007 Old Law	FY 2007 New Law	3 Years Old Law	3 Years New Law
<b>Cigarette Tax</b>								
Tribal Payments	0.803	0.803	1.195	1.735	1.166	2.234	3.164	4.772
General Fund	34.639	34.608	33.321	33.193	32.397	32.030	100.357	99.831
Long-Range Building Program	1.704	1.849	1.639	1.914	1.594	1.847	4.937	5.610
State Veterans' Nursing Home *	3.289	4.826	3.164	6.109	3.077	5.895	9.530	16.830
Health & Medicaid Initiatives	0.000	16.867	0.000	32.383	0.000	31.249	0.000	80.499
<b>Totals</b>	<b>\$40.435</b>	<b>\$58.953</b>	<b>\$39.319</b>	<b>\$75.334</b>	<b>\$38.234</b>	<b>\$73.255</b>	<b>\$117.988</b>	<b>\$207.542</b>
<i>Change</i>		\$18.518		\$36.015		\$35.021		\$89.554
<b>Moist Snuff &amp; Other Tobacco Tax</b>								
Tribal Payments	0.085	0.085	0.107	0.163	0.110	0.223	0.302	0.471
General Fund	3.687	3.677	3.760	3.779	3.855	3.847	11.302	11.303
Health & Medicaid Initiatives	0.000	1.861	0.000	3.779	0.000	3.847	0.000	9.487
<b>Totals</b>	<b>\$3.772</b>	<b>\$5.623</b>	<b>\$3.867</b>	<b>\$7.721</b>	<b>\$3.965</b>	<b>\$7.917</b>	<b>\$11.604</b>	<b>\$21.261</b>
<i>Change</i>		\$1.851		\$3.854		\$3.952		\$9.657
<b>All Tobacco Taxes Combined</b>	<b>\$44.207</b>	<b>\$64.576</b>	<b>\$43.186</b>	<b>\$83.055</b>	<b>\$42.199</b>	<b>\$81.172</b>	<b>\$129.592</b>	<b>\$228.803</b>
<i>Change</i>		\$20.369		\$39.869		\$38.973		\$99.211

\* The greater of 8.3 percent or \$2.0 million. Excess above \$2.0 million at the end of fiscal year is returned to the general fund.

As shown in Figure 4, total revenues from all tobacco taxes will increase by \$99.2 million over the three-year period FY 2005 through 2007. Of this increase, \$90.0 million will be deposited into the new health and Medicaid initiatives account and the general fund will receive an additional \$6.8 million. The long-range building program and tribal governments will receive \$0.7 million and \$1.8 million, respectively.

## DISTRIBUTION

In addition to the tax increases contained in the initiative, it also changes the distribution of cigarette and tobacco taxes and creates a new state special revenue fund called the health and Medicaid initiatives account. This account is to be administered by the Department of Public Health and Human Services. The following is the portion of the initiative that specifically addresses the use of the funds in this new account.

(3) This account shall be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased Medicaid services and Medicaid provider rates. The increased revenue is intended to increase Medicaid services and Medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for Medicaid services and Medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) Until the programs or credits described in subsections 3(b) and 3(d) are established, the funding shall be used exclusively for the purposes described in subsections 3(a) and 3(c).

(5) The phrase "trended traditional level of appropriation" as used in subsection 3(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.

Figure 5

Cigarette and Tobacco Tax Distribution  
Old Law vs. New Law

Cigarette Tax	Old Law	New Law	Change
General Fund	87.4%	45.1%	-42.3%
Long-Range Building Program	4.3%	2.6%	-1.7%
State Veterans' Nursing Home *	8.3%	8.3%	0.0%
Health & Medicaid Initiatives	0.0%	44.0%	44.0%
Totals	100.0%	100.0%	0.0%
Moist Snuff & Other Tobacco Tax	Old Law	New Law	Change
General Fund	100.0%	50.0%	-50.0%
Health & Medicaid Initiatives	0.0%	50.0%	50.0%
Totals	100.0%	100.0%	0.0%

\* The greater of 8.3 percent or \$2.0 million.

Figure 5 shows the distribution of the cigarette and tobacco tax under the old law versus the new law. As shown in the figure, the general fund and long-range building program accounts will receive a smaller percentage of the cigarette tax under new law versus old law. The health and Medicaid initiatives account will receive 44.0 percent of the total cigarette tax beginning January 1, 2005. As noted in Figure 2, the state veterans' nursing home account receives the greater of 8.3 percent of the cigarette tax or \$2.0 million. Under the new tax rate, 8.3 percent will be the greater amount. However, 16-11-119(2), MCA states that "if money in the state special revenue fund for the operation and

maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund."

Figure 5 also shows the distribution of the moist snuff and other tobacco taxes. The general fund account will receive 50.0 percent of these collections beginning January 1, 2005, while the health and Medicaid initiatives account will receive the remaining 50.0 percent.

## CONSUMPTION DECLINE

When the \$0.52 cigarette tax increase was enacted during the 58th Legislature (SB407), a price elasticity factor was applied to taxable packs of cigarettes to determine an estimate of the anticipated consumption decline. Price elasticity is simply defined as the predicted consumption response due to a price change in a commodity. An elasticity factor of  $-0.44$  was assumed when the tax rate was increased to \$0.70 per 20-count pack. In FY 2005, however, a higher elasticity factor of  $-0.80$  is assumed. This assumption is based on similar tax increases implemented in other states and the decline in consumption that occurred in those states. Therefore, since the average retail price of cigarettes is expected to increase by about 27 percent, total consumption should decline by nearly 22 percent with the enactment of the higher tax rate. If this consumption response rate is correct, total packs consumed will drop from 60.9 million packs in FY 2004 to about 44.0 million packs by FY 2007. A  $-0.80$  elasticity factor was also applied to other tobacco products.

## TAX AVOIDANCE

In addition to the consumption decline described above, the amount of smuggling and across-the-border or internet purchases that will take place has not been factored into the revenue estimates. Based on several studies done on the tax avoidance issue, the reduction in state revenues could be in the range of 5-8 percent of total revenues. To what extent smokers may try to avoid the large tax increase in Montana is unknown. Montana, like other states, may experience a stockpiling effect in November and December with a return to a more normal purchasing behavior once the inconvenience of across-the-border and internet sales becomes tiresome.

According to the Campaign for Tobacco-Free Kids, "every single state that has significantly raised its cigarette tax rate has enjoyed substantial increases to state revenues, despite the fact that cigarette tax

increases reduce state smoking levels and despite any related increases in cigarette smuggling or cigarette tax avoidance.”

## STATE COMPARISONS

Figure 6 provides tax rate comparisons among the states. As shown in the figure, Montana has the fourth highest rate in the nation at \$1.70 per 20-count pack. Rhode Island is first at \$2.46, New Jersey is second at \$2.40, and Michigan is third at \$2.00 per 20-count pack. Overall, the “all states’ average” is \$0.84 per 20-count pack. Figure 7 shows the tax rates by state but in map form. As shown on the map, the states surrounding Montana are significantly below Montana’s tax rate. Washington and Oregon are the closest at \$1.42 ½ and \$1.18 per 20-count pack, respectively.

Figure 6

STATE CIGARETTE EXCISE TAX RATES & RANKINGS								
Overall All States' Average: 84.0 cents per pack								
Major Tobacco States' Average: 15.3 cents per pack								
Other States' Average: 93.1 cents per pack								
State	Tax	Rank	State	Tax	Rank	State	Tax	Rank
Alabama	42.5	39th	Louisiana	36	42nd	Oklahoma <sup>6</sup>	103	15th
Alaska <sup>1</sup>	160	5th	Maine	100	16th	Oregon <sup>7</sup>	118	13th
Arizona	118	13th	Maryland	100	16th	Pennsylvania	135	11th
Arkansas	59	29th	Massachusetts	151	6th	Rhode Island	246	1st
California	87	21st	Michigan	200	3rd	South Carolina	7	49th
Colorado <sup>2</sup>	84	22nd	Minnesota	48	37th	South Dakota	53	35th
Connecticut	151	6th	Mississippi	18	47th	Tennessee	20	45th
Delaware	55	32nd	Missouri	17	48th	Texas	41	40th
DC	100	16th	Montana <sup>5</sup>	170	4th	Utah	69.5	26th
Florida	33.9	44th	Nebraska	64	27th	Vermont	119	12th
Georgia	37	41st	Nevada	80	23rd	Virginia <sup>8</sup>	20	45th
Hawaii <sup>3</sup>	140	10th	New Hampshire	52	36th	Washington	142.5	9th
Idaho <sup>4</sup>	57	30th	New Jersey	240	2nd	West Virginia	55	32nd
Illinois	98	19th	New Mexico	91	20th	Wisconsin	77	25th
Indiana	55.5	31st	New York	150	8th	Wyoming	60	28th
Iowa	36	42nd	North Carolina	5	50th	Puerto Rico	103	15th
Kansas	79	24th	North Dakota	44	38th	Guam	118	13th
Kentucky	3	51st	Ohio	55	32nd	Northern Marianas	135	11th

<sup>1</sup> Effective 1/1/05.

<sup>2</sup> Effective 1/1/05.

<sup>3</sup> Scheduled to revert to \$1.00 on 7/1/06.

<sup>4</sup> Scheduled to revert to 28¢ on 7/1/05.

<sup>5</sup> Effective 1/1/05.

<sup>6</sup> Effective 1/1/05.

<sup>7</sup> Temporary 10¢ increase expired 1/1/04.

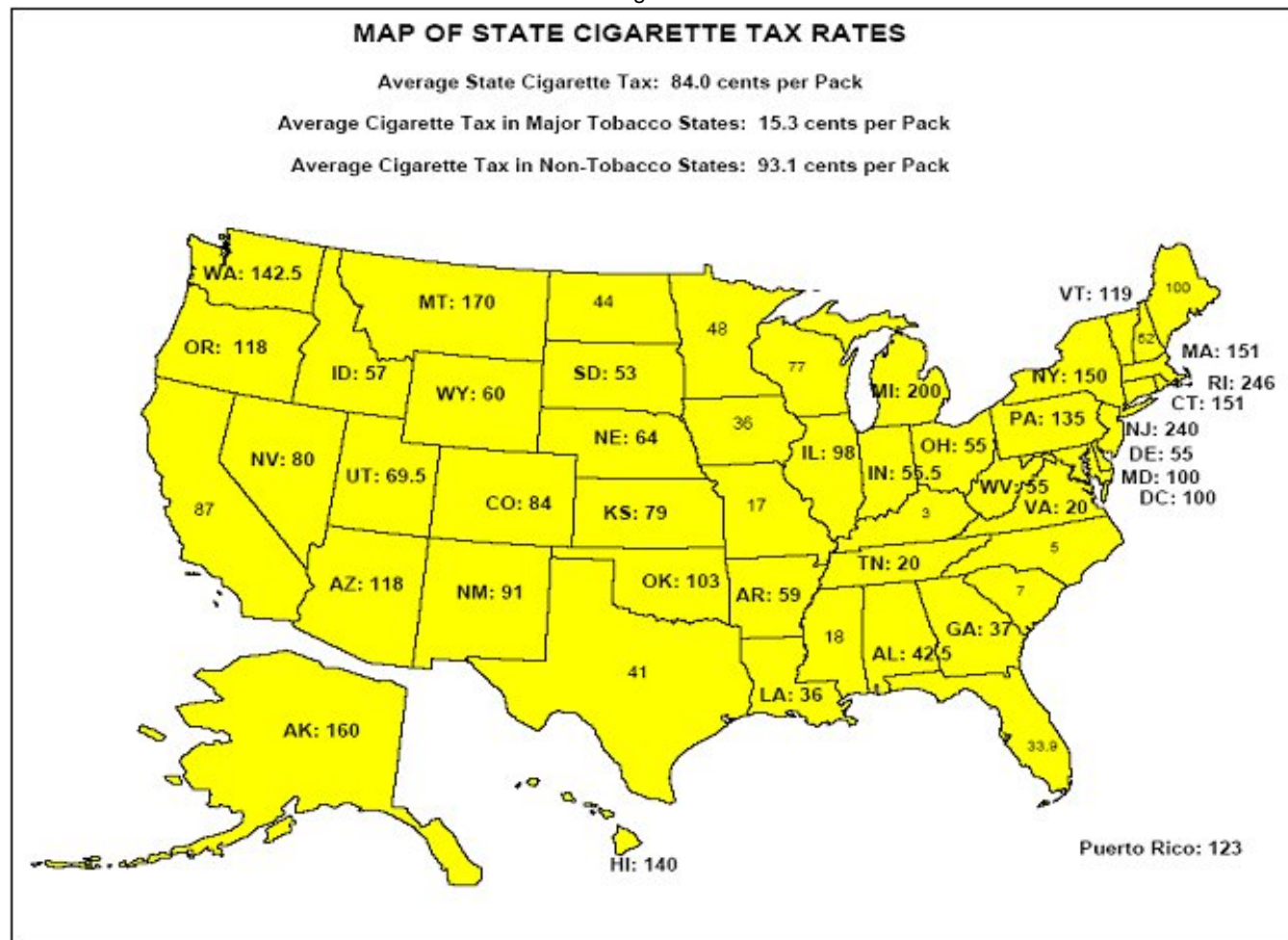
<sup>8</sup> Effective 9/1/04, with 10¢ increase on 7/1/05.

## TOBACCO ALLIANCE

After passage of I-149, a group called the Tobacco Alliance began meeting to develop and present a plan to the 2005 Legislature to implement the initiative. The group includes representatives of the Governor-Elect, the State Auditor, the American Cancer Society, AARP (American Association of Retired Persons), Montana Nurses Association, hospitals, nursing homes, and other parties. The group formed four subcommittees to work on specific recommendations for the Children’s Health Insurance Plan (CHIP), small business health insurance, prescription drugs, and Medicaid provider rates. The plan had not been finalized of November 2004.



### MAP OF STATE CIGARETTE TAX RATES



Press reports in late November 2004 noted that the executive budget included private donations for CHIP match as a “place holder” in anticipation of passage of I- 149. A portion of the health and Medicaid initiatives account is to be used to maximize enrollment in the CHIP program and may only be used for CHIP match. The statute further states that the funding in the account...“is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.” (53-6-206(3)(a), MCA). The language in the initiative directs “non-supplantation” of existing state matching CHIP revenues with the new cigarette tax revenues.

LFD staff discussed, with legislative legal staff, the meaning of 53-6-2-6(3)(a), MCA. Legal staff concluded that the language is clear. Funds from the \$1 per pack cigarette tax must be used for increased CHIP enrollment above the FY 2005 appropriation level. If the legislature accepts the executive premise that base level CHIP program expenditures be funded from increased cigarette tax revenues, 53-6-2-6(3)(a), MCA should be amended to allow such a use.

## FEDERAL JOBS AND GROWTH TAX RELIEF FUNDS OF 2003

In response to severe fiscal shortfalls experienced by almost all states in FY 2002 and FY 2003, Congress passed legislation providing fiscal relief to states. Called the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Jobs and Growth), the legislation consisted of two types of fiscal relief: 1) a temporary increase in the federal Medicaid benefits participation rate; and 2) a general use block grant of \$50 million.

### MEDICAID

The Medicaid program, which provides medical care to low-income persons, is funded with a combination of federal and state funds. Federal funds provide the bulk of the funding, and are matched by state revenues. When the legislature estimates Medicaid costs, it applies the estimated federal Medicaid matching rate to determine the federal appropriation, and appropriates general fund to fund the state responsibility. In order to reduce state costs for Medicaid, the Jobs and Growth act increased the federal Medicaid matching rate for the period of March 2003 (FY 2003) through fiscal year end 2004 (June 30, 2004) by 2.95 percentage points (to 75.91 percent in FY 2004 from the originally estimated 72.96 percent). Consequently, the state required less general fund to fund Medicaid than had been appropriated. The Department of Public Health and Human Services (DPHHS) reverted about \$4 million in FY 2003 and about \$14.4 million in FY 2004 to the general fund due to the lower match rate.

Because the lower rate was in effect throughout the base year FY 2004 expenditures, federal funds are overstated and general fund understated. The 2007 executive budget replaces federal funds no longer available with general fund in order to maintain services. For a further discussion, see the Department of Public Health and Human Services in Volume 3 of the Legislative Budget Analysis 2007 Biennium (page B-9).

### GRANT

The federal government also provided \$50 million total (\$25 million in each of FY 2004 and FY 2005) for use by the states for any purpose meeting the following criteria:

- To provide essential government services
- To cover the costs to the state of complying with any unfunded federal mandates

The funds could only be used for expenditures “permitted under the most recently approved budget for the state”, meaning they could not be used to fund new programs not already funded.

As a condition of the grant, the federal government required that all funds be obligated by September 30, 2004. The Governor fulfilled this requirement when she identified a number of activities for augmented funding, and obligated the remainder of the \$50 million for wildfire costs. After a mild fire season in fall 2004, funds originally obligated for wildfires are now available for re-allocation.

The Governor was able to make these allocations (\$49.85 million) under the budget amendment statutes. No further allocations can be made by the Governor once the legislature is in session and able to act.

Figure 8

Governor's Proposed or Actual Allocations  
Federal Relief Funds  
2005 Biennium

Function	Fiscal 2004	Fiscal 2005	Biennium
<b>Expended</b>			
Fire Costs***	\$34,827,143	\$2,252,938	\$37,080,081
<b>Authorization</b>			
Defense in Bankruptcy Hearings*			
Public Service Commission**	\$354,685		\$354,685
Department of Justice**	712,385		712,385
Subtotal Bankruptcy Hearings	\$1,067,070		\$1,067,070
Governor's Office			
Extradition of Prisoners		\$40,000	\$40,000
Economic Development made in Montana		25,000	25,000
Subtotal Governor's Office	\$0	\$65,000	\$65,000
Department of Livestock			
Meat Inspector		23,031	23,031
Department of Natural Resources and Conservation			
Water Rights Data Base		\$100,000	\$100,000
Helicopter	150,000		150,000
Subtotal DNRC	\$150,000		\$250,000
Department of Military Affairs			
Winter Storm Emergency	249,682		249,682
Department of Corrections			
Room and Board		1,000,000	1,000,000
Health and Human Services			
Meals on Wheels	\$257,000	\$257,000	\$514,000
Low Income Energy Assistance*	2,000,000	0	2,000,000
Reduce vacancy savings at institutions	750,000	750,000	1,500,000
Subtotal Human Services	\$3,007,000	\$1,007,000	\$4,014,000
K-12 Education*			
Technology Fund	\$1,750,000		\$1,750,000
Reading in the early school years grants	450,000		450,000
Vocational Education	250,000		250,000
OPI - Technical assistance for No Child Left Behind	50,000		50,000
OPI - Curriculum development for Indian Cultural Heritage	50,000		50,000
Renewal Commission	25,000		25,000
Reduce vacancy savings for Montana School for the Deaf and Blind	125,000	116,046	241,046
Subtotal K-12 Education	\$2,700,000	\$116,046	\$2,816,046
Capital Projects*			
Room Renovation		133,121	133,121
Repair Capitol steps	450,000		450,000
Subtotal Capital Projects	450,000	133,121	583,121
Montana University System*			
General with requirement to indicate how it will be distributed	\$2,000,000		\$2,000,000
Community Colleges	450,000		450,000
Distance Learning	250,000		250,000
Subtotal Higher Education	\$2,700,000		\$2,700,000
Total Federal Funds	\$45,150,895	\$4,532,136	\$49,848,031
Remainder			\$151,969

\*Biennial appropriation.

\*\*All expenditures have been reimbursed by Northwestern Energy.

\*\*\*Includes estimate of Spring 2005 fire costs and the net of a payback of \$222,890 in the Department of Military

These expenditures are all considered one-time-only and are not included in the FY 2004 base used as the starting point for 2007 biennium budget building. The Governor has not requested replacement of any of the functions with general fund, although Governor Martz has requested general fund of almost \$500,000 to plan for implementation of Indian Education for All, and \$570,000 to augment career and vocational technical education. Both proposed appropriations are in the Office of Public Instruction. State responsibility for fire suppression costs would again be funded with general fund absent any other action by the 2005 Legislature.

As shown in the table, almost \$152,000 remains unallocated, and available for legislative appropriation. In addition, additional funds could become available prior to the end of the fiscal year through either of two means:

1. Funds currently obligated for the remainder of FY 2005 fire suppression costs could remain unspent depending upon the severity of the remainder of the fire season
2. Funds allocated for a number of purposes could also remain unspent

The legislature may wish to be kept apprised of actual and proposed expenditures from the account throughout the legislative session.

## STATEWIDE PUBLIC DEFENDER SYSTEM

The Law and Justice Interim Committee voted to introduce legislation in the 2005 legislative session to provide a statewide public defender system, which could have a significant fiscal impact on the District Court Operations Program. This legislation, LC 214, is partially in response to a lawsuit filed in district court by the ACLU against the State of Montana and Missoula County. The ACLU alleges that defendants are not being provided public defender services in a fair and consistent manner among jurisdictions. Also, the ACLU argues that the current system creates a conflict of interest when the judge appoints a public defender for a case that is being adjudicated by that judge. The attorney general and the ACLU signed a stipulation placing the lawsuit on hold until May 2005, pending the actions of the legislature and outcome of the proposed legislation. If this legislation were passed, current assumptions project that approximately \$8.2 million would be moved from the District Court Assumption Program to the Chief Public Defender Office, at the beginning of FY 2007, and additional costs to staff the central office would be incurred. This office would oversee the statewide public defender system and is proposed to reside within the Department of Administration.

The system proposed in LC 214 would provide public defender services in criminal and certain civil cases for any individual who is: 1) determined to be financially unable to retain private counsel; and 2) accused of an offense that could result in the person's loss of life or liberty if the person is convicted. The proposed system would provide public defender services in the Supreme Court or in any district court, justice court, or city or municipal court in the state. A Public Defender Commission, comprised of seven individuals appointed by the Governor, would head the statewide system. The commission would oversee a Chief Public Defender Office responsible for managing regional public defender offices, contracts with private attorneys, and the appellate defender function.

Figure 9 Estimated Costs of the Statewide Public Defender System for the 2007 Biennium		
	Amount	Percent
Current Costs*	\$10,604,998	75%
New Costs**	3,495,805	25%
2007 Biennium	<u>\$14,100,803</u>	<u>100%</u>
Fiscal 2006 (transition year)	\$655,503	
Fiscal 2007 (first full year)	13,455,300	
One-Time (start-up) costs	548,731	
Ongoing new costs (annual)	2,947,074	
*Currently paid by either the state, city or county		
**Mostly those of the Chief Public Defender Office		

The current estimate of the cost of the public defender system for the 2007 biennium is \$14.1 million. Figure 9 illustrates the level of new costs that mostly relate to the establishment and operation of a Chief Public Defender Office vs. costs that are currently being paid for by either the state or by the collective counties and cities.

Figure 10 Public Defender Costs Currently Funded				
Entity	Item	Dollars	Dollars	Percent
State				
	Funds certain district court costs		\$8,153,295	77%
Counties				
	Funds certain district court costs	\$674,157		
	Funds justice court costs	1,040,000	1,714,157	16%
Cities				
	Funds city and municipal court costs		<u>737,546</u>	<u>7%</u>
Total Costs Currently Funded			<u>\$10,604,998</u>	<u>100%</u>

Figure 10 illustrates how current public defender services are funded. These costs include payments for public defender services provided by seven county-managed public defender offices through the state, services provided by private attorneys, transcripts, private investigator services, and witness fees and

expenses. The amount noted in the table as state costs are those costs that currently reside within the District Court Assumption Program under the operating costs area.

FY 2006 would be a year of transition, whereby the commission and the chief public defender would undertake a process to convert the current system of services provided by the state and the collective counties and cities, to one that provides services on a statewide system. Figure 11 illustrates the costs for the system under a biennium without a transition period.

LC 214 proposes that the costs of the statewide system be shared by the state and by each county and city. The percentage that each entity currently contributes to the total costs of the current system forms the cost sharing formula. Therefore, the costs of the statewide system would be allocated as follows: 1) about 77 percent to the state; 2) about 16 percent to the counties; and 3) about 7 percent to the cities. The county cost allocation factors would be based on: 1) population; 2) taxable value; and 3) the number of index crimes committed in the county. The city cost allocation factors would be based on: 1) population; and 2) taxable value. Implementation language in the legislation instructs the commission to recommend how these cost allocation factors could be changed to include an actual caseload factor when accurate caseload data becomes available.

Figure 11		
Estimated Costs of the Statewide Public Defender System for a Biennium Without a Transition Period		
Dollars in Millions		
Item	Amount	Percent
Current Costs*	\$21.2	78%
New Costs**	<u>5.9</u>	<u>22%</u>
	<u>\$27.1</u>	<u>100%</u>
*Currently paid by either the state, city or county		
**Mostly those of the Chief Public Defender		

## DISTRICT COURT ASSUMPTION

The 57th Legislature approved Senate Bill 176, which mandated state funding of Montana district courts with general fund revenue beginning July 1, 2002 that was previously funded by the counties. On that date, the Judiciary assumed the responsibility for oversight and administration of 22 judicial districts with approximately 245.00 FTE. The bill made district courts part of the Judicial Branch of state government. The assumption of district courts did not include the clerks of court and public defenders, although costs to pay for indigent defense were assumed by the state. Costs of the district courts statewide assumption are divided into fixed and variable. Variable costs include juror and witness fees and expenses and indigent defense costs. Indigent defense costs comprise over 80 percent of total variable costs.

The Supreme Court's assumption of the district courts has presented significant fiscal challenges, including a cost overrun resulting in a supplemental funding request of \$5.8 million, an over 25 percent growth, for FY 2005. This supplemental is mostly due to expenditures for public defender services provided by appointed, contracted or county-managed public defenders. See the "Fiscal 2005 Supplemental" section of the Judiciary narrative on page A-18 of Volume 3. The additional costs are not associated with any major, non-recurring case, and as a result, the increased costs will continue into the future unless there are significant changes.

Further, budget reporting by the Judiciary does not allow for an easy identification of the reasons for variances, as variable costs are not budgeted at the judicial district level. The individuals that manage these districts have limited knowledge of the level of spending that is taking place within their jurisdiction. They can create expenditures; however, they do not have a budget to guide the level of expenditure. Budget reporting is also not at a level to easily identify variances for expenditures related to public defense and other costs.

The state cost of the district court assumption is significantly higher than the amount envisioned in the fiscal note for SB 176 in the 2001 session, and there is no clear resolution of this issue, since variable costs continue to be unpredictable and cost controls continue to be weak. This issue should remain on the legislature's "watch" list as a potential budget breaker. The legislature may wish to request that the Judiciary allocate the budget to a level that would allow for the management of cost and easy identification of variances.

## MEDICARE MODERNIZATION ACT

The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) was signed into law in December 2003. The most significant change, due to passage of the MMA, is the addition of an outpatient prescription drug benefit (Part D) for Medicare beneficiaries. Despite state and federal implementation issues, outpatient drug assistance is a significant benefit for Medicare beneficiaries. To date, there are many undefined aspects of the MMA, including the underlying data needed to calculate the fiscal effects.

## THE DIFFERENCE BETWEEN MEDICARE AND MEDICAID

Medicare and Medicaid are two national programs that provide health care to several groups of persons. Medicare is 100 percent federally funded and provides certain health care services to persons 65 and older and certain disabled persons who meet federal social security disability criteria. On the other hand, Medicaid is jointly funded by states and the federal government, with the federal cost share determined by a state's per capita income compared to national per capita income.

There are three general categories of Medicaid eligibility:

- Aged – over the age of 65
- Disabled or blind (must meet federal social security disability criteria)
- Family (must have dependent children)

In general, an able bodied, childless adult over the age of 21 is not eligible for Medicaid regardless of income.

Medicaid is means tested, meaning that all persons must meet financial and resource eligibility tests. Montana Medicaid eligibility criteria, in most instances, are at or near the federal minimum requirements. The most generous financial eligibility levels are for pregnant women and young children, who can have incomes up to 133 percent of the federal poverty level. Otherwise, children can be eligible for Medicaid in families with incomes up to 100 percent of the federal poverty level, while their parents are eligible for Medicaid only if family income is below 39 percent of the federal poverty level.

### ***Dual Eligibles and Drug Coverage***

Aged and disabled persons who are eligible for Medicaid are generally eligible for Medicare as well. The new Medicare Part D prescription drug benefit will have an impact on state Medicaid programs due to these dually eligible persons, because the Montana Medicaid program covers outpatient prescription drugs, while historically Medicare has not. Dually eligible persons will maintain all of their current Medicaid covered services, except drug coverage, which will be provided through Medicare funded prescription drug plans.

The interaction of state Medicaid programs with the new Part D benefit will:

- Impose new state administrative duties
- Offset some of the costs of Medicaid drug costs
- Provide payments to state health plans for qualified retiree drug coverage



### ***Implementation During the 2007 Biennium***

The Part D benefit will be implemented January 1, 2006, so MMA requirements for state administrative duties, payments for retiree coverage, and cost sharing will be effective for three quarters of the 2007 biennium. The 2005 Legislature will deal with several impacts of the MMA that are common to all states. At this point, is not possible to tell whether Montana will experience a net gain or loss in general fund costs due to offsetting aspects of the MMA, and it is not evident how fiscal and policy issues associated with the MMA will be addressed in the executive budget request or legislative package.

### ***Impacts to States***

The major state fiscal and public policy issues are:

- General fund savings due to federal assumption of prescription costs for some Medicare eligible persons currently eligible for and receiving Medicaid or Mental Health Services Plan (MHSP) prescription drug benefits
- General fund costs from state payments to the federal government for the Medicaid drug cost savings (the “clawback”)
- Increased Medicaid costs due to new enrollees discovered during Part D outreach (the “woodwork effect”)
- General fund costs if the state opts to provide a “wrap around” benefit for potential or known Medicare prescription coverage gaps
- Administrative and workload impacts to provide low-income eligibility determination, beneficiary education, grievance resolution, and coordination with the Social Security Administration
- Potential for federal reimbursement of 28 percent of allowable costs for state health plan insurance coverage for drugs for Medicare eligible employees and retirees

These issues are discussed in greater detail in the budget overview for the Department of Public Health and Human Services, Volume 3, page B-16.

### ***Many Unknowns***

There are three federal agencies involved in administration and implementation of the MMA:

- Centers for Medicare and Medicaid Services
- Social Security Administration
- Office of Civil Rights

As of November 2004, only one of the federal agencies – Center for Medicaid and Medicaid Services – had published draft rules to implement the MMA. At this point, and maybe even as of the end of the 2005 legislative session, there maybe little guidance available to states to estimate the cost savings or workload and cost increases due to the MMA. The legislature will need to consider appropriation and policy issues that may require action without sufficient federal guidance to know potential impacts with much certainty.

## LONG-TERM STABILITY OF GENERAL FUND

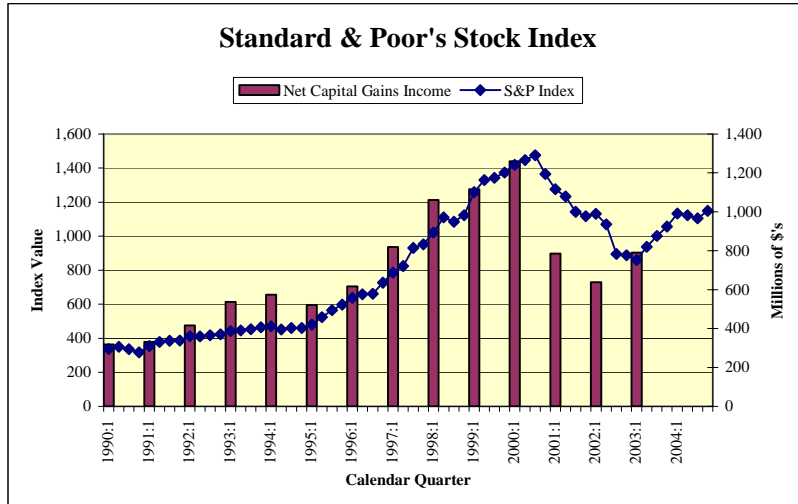
### INTRODUCTION

The state general fund is the primary account that funds a significant portion of the general operations of state government. Since this fund is critical to the operations of state government, the long-term stability of this account is an issue that must be examined for development of sound fiscal policies. This section of the document discusses three key issues relevant to the ensuing legislative session and the necessary planning for subsequent sessions. The issues addressed are: 1) revenue stability; 2) reliance on federal funds; and 3) funding demands.

### REVENUE STABILITY

The 1990's were generally good years for Montana's economy. With a few exceptions, Montana experienced above average employment and wage levels that translated into strong tax revenue growth. This revenue growth was further enhanced by the significant increase in the equity markets and the resulting growth in capital gains income. During calendar 2002 and 2003, however, the state's financial picture blurred as the effects of a national economic recession, terrorism threats, and mid-east tensions played havoc on the US economy. Although Montana's economic base remained relatively stable during this period, state general fund revenues plummeted. This inconsistency was due to the precipitous fall in equity markets, low interest rates, and reduced corporate profits. All of these factors contributed to the 2002/2003 budget crisis while the state's economy continued to outperform the national economy.

Figure 12



As Montana moves forward into the next century, there are valuable lessons that can be extracted from the financial experiences of the 1990's. For example, as the information technology age was exploding during the nineties, the equity markets were experiencing phenomenal growth rates.

As shown in Figure 12, the S&P stock index reached a high of almost 1,500 in calendar 2000 and then declined abruptly until 2003 when the index dropped to about 850. Figure 12 also shows the corresponding

trend in net capital gains realizations as reported on Montana's tax returns. As the figure shows, the trends in reported net capital gains income is highly correlated to the S&P index. This means that state tax revenues experienced significant growth from the mid to late nineties due to the information technology euphoria. In the meantime, while this growth scenario was occurring, state general fund expenditures were increased along with passage of significant tax relief measures. The actions of the legislature, in essence, expanded the expenditure base and reduced the tax base based on the assumption that strong revenue growth would continue indefinitely. Obviously, the budget crisis of

2002/2003 refuted this supposition.

For the 2005 and 2007 biennia, a similar situation may be developing. Montana's oil and natural gas revenues are increasing significantly when compared to previous biennia. The issue is whether these increased revenues are "on-going" or are a short-term "blip" (similar to net capital gains income) that may fade in the future.

Figure 13

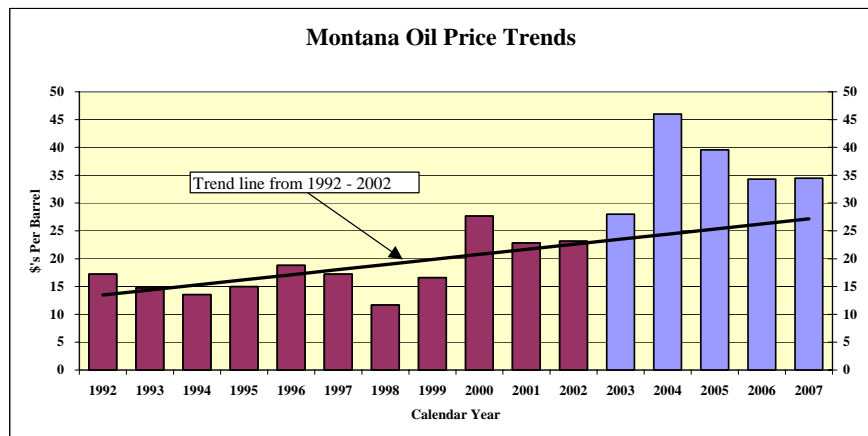
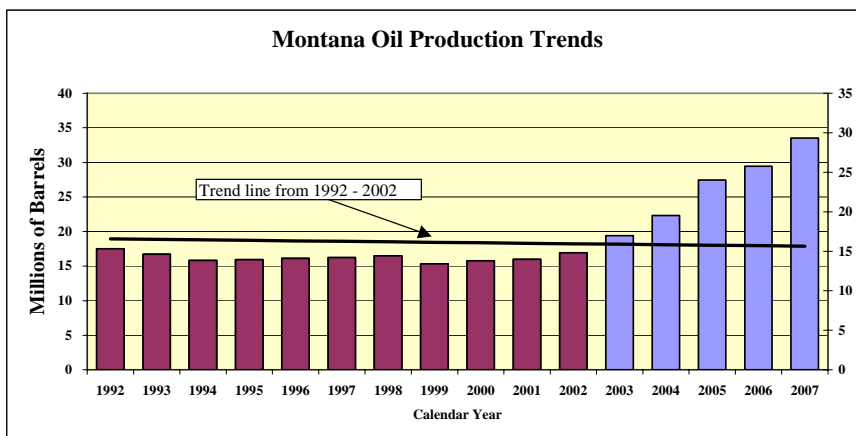


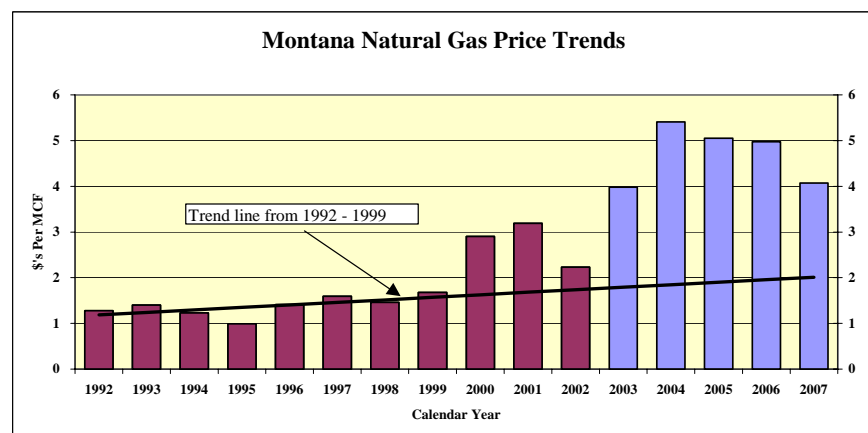
Figure 14



Figures 13, 14, 15 and 16 show the trends in Montana's price and production for oil and natural gas. The data shown for calendar 1992 through 2003 are actual information extracted from the Department of Revenue's computer system. The estimates shown for the period calendar 2004 through 2007 are based on assumptions adopted by the Revenue and Transportation Committee (RTIC) on November 16, 2004.

In addition to the actual and estimated amounts, the figures also show a trend line based on the calendar years indicated in the annotations. These trends are based on a common statistical technique that minimizes the differences between the trend estimate and the actual amount. The trend lines are extrapolated into the future to indicate what the "trend" would be under a status quo situation. However, both oil and natural gas prices have increased dramatically in response to the war in Iraq and the uncertainty about future supplies.

Figure 15

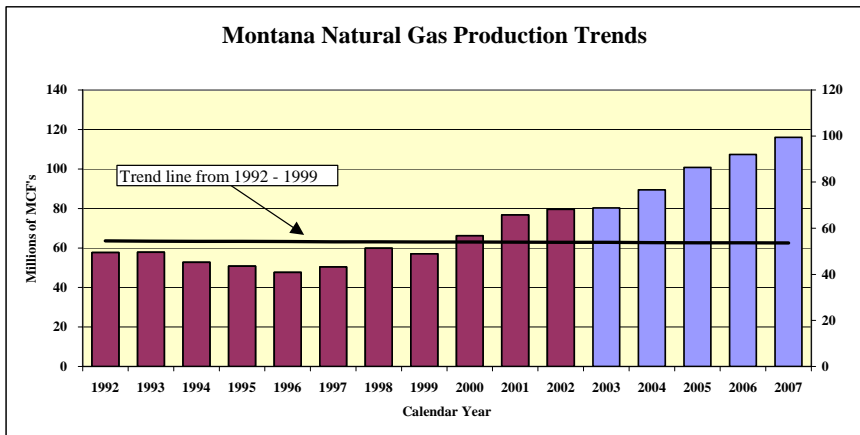


The RTIC was aware of these developments and adjusted the price and production assumptions accordingly. As shown in the figures, it is quite apparent that the price assumptions adopted by RTIC are expected to peak and then begin to trail off by the end of calendar 2007.

Based on this outlook, it could be argued that a significant amount of additional revenue in the next several years could be considered “one-time” and will not be available in subsequent biennia. If this hypothesis is correct, the 59<sup>th</sup> Legislature should consider creating a “rainy day fund” and transferring a portion of the potential one-time

revenue into this fund. It is estimated that the additional revenue due to price and production being above the trend lines could be as much as \$80 million general fund or \$180 million all funds for calendar 2006 and 2007. These estimates most likely represent a maximum estimate since the probability of price and production amounts returning to the trend line amounts are low. Bottom line, the legislature should be prudent in utilizing these potential one-time revenues for the 2007 biennium budget.

Figure 16



## RELIANCE ON FEDERAL FUNDS

General fund expenditures have increased on average over 4.5 percent from fiscal 1990 to 2004. Correspondingly, federal funds expended have increased over 9.5 percent during this same period. In both funds, however, there have been some budgetary changes that skew these percentages. For example, HB124 (local government entitlement legislation), diverted some local government revenues to the state treasury in return for a state general fund entitlement appropriation to local governments. This change increased general fund revenues by approximately the same amount of increased general fund expenditures. During the 2003 biennium, the state food stamp program was included in the budgeting process. Prior to this time, this program was considered “off budget” and was not included as a federal fund expenditure.

Regardless of these changes, the fact remains that federal funds continue to be a much larger portion of the total state budget. As shown in Figure 17, general fund expenditures represented over 60 percent of the combined general and federal fund expenditures in FY 1990. By FY 1999, the percentage split was about equal. By FY 2004, however, federal funds represented over 55 percent of the combined spending to about 44 percent from the general fund. Total federal funds expended in FY 2004 was \$1.597 billion compared to \$1.282 billion general fund, for a difference or gap of \$315.3 million. If Montana was to lose some or all of this gap, the impact on the services provided to the citizens would be significantly reduced. To maintain the same level of services would require a substantial change in state tax policy.

Figure 17

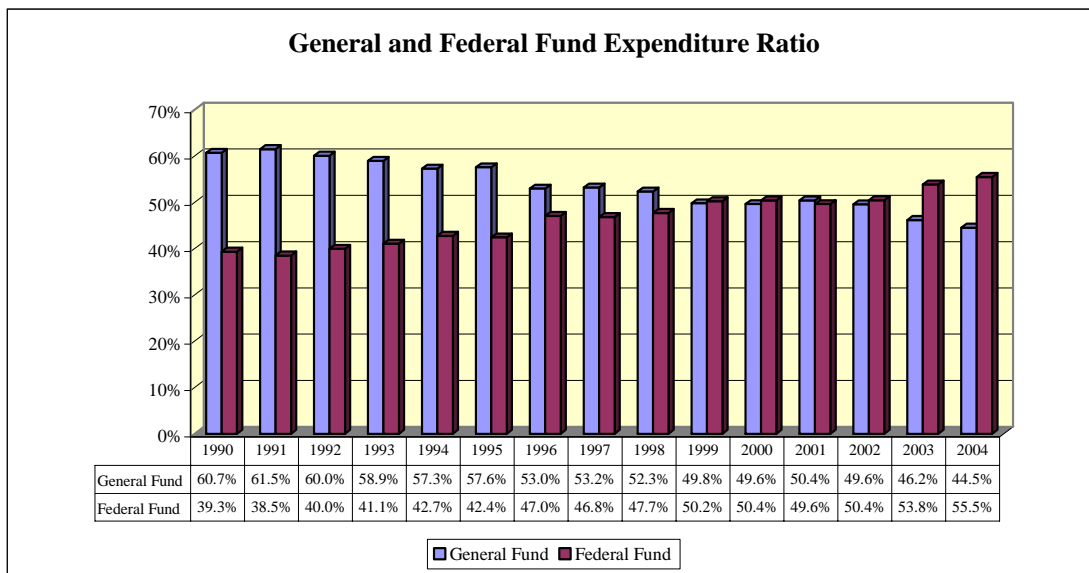
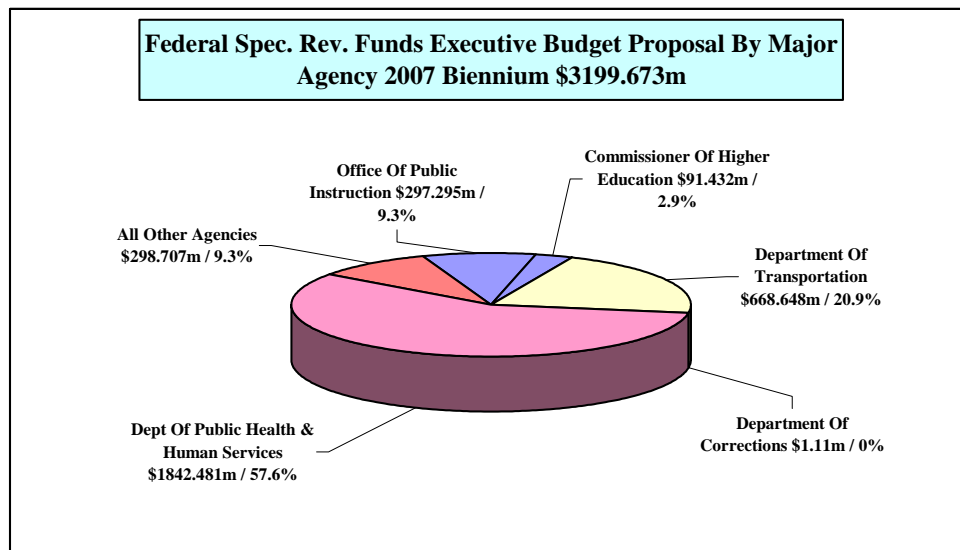


Figure 18 shows the 2007 biennium executive budget recommendation for federal special revenue funds. As the figure shows, public health and transportation services consume almost 80 percent of the federal funds recommended in the executive budget. A reduction in federal funding would have a significant impact to these state programs.

Figure 18



On Friday, December 17, 2004, the "Great Falls Tribune" printed an article on the outlook for President Bush's proposed federal budget. According to President Bush, "What I'm saying is we're going to submit a tough budget. And I look forward to working with Congress on the tough budget". According to this article, President Bush is ready to propose freezing or even slightly cutting overall domestic spending. With federal deficits hovering around \$400 billion and the continued Iraq war funding demands, the prospect for federal funding freezes or reductions are a real possibility, not only in the

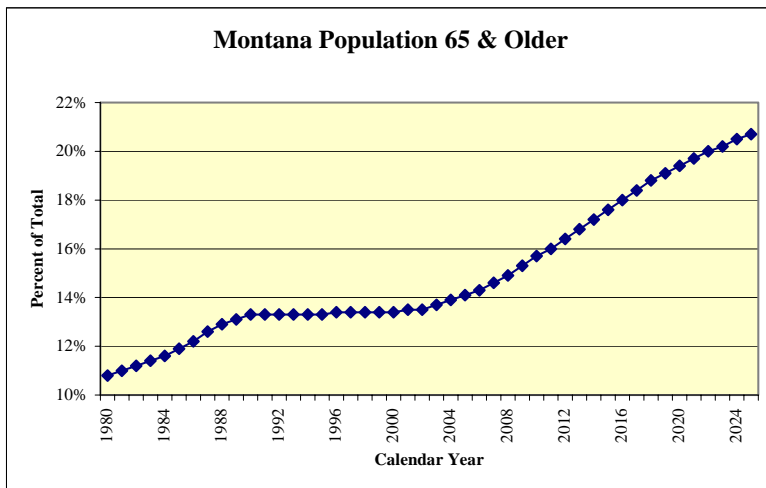
near-term but also in the long-term. The 59<sup>th</sup> Legislature may want to consider developing a long-range plan in the event of a reduction in federal funds.

## FUNDING DEMANDS

Businesses as well as government constantly experience the changing and competing demands for available dollars. Whether a business is contemplating expansion or technology enhancements, state government experiences the same type of needs and priorities in order to continue services to the citizenry of the state.

One of the most significant events that is beginning to surface in Montana is the projected increase in the aging population. Between 2002 and 2024, Montana's population 65 and older is expected to increase from 13.5 percent of the total population to 20.5 percent, or a change in older residents in excess of 80,000. As shown in Figure 19, Montana experienced rapid growth in this age cohort from calendar 1980 to 1990.

Figure 19



Starting in calendar 1991 through 2002, this trend waned with the percentage of residents in this age bracket remaining quite constant. From calendar 2002 to 2024 this trend is once again changing showing a significant percentage of Montana's total population in the 65 and older age range. If these projections are correct, by calendar 2024 one out of every five Montanan's will be at least 65 years old.

The primary cause of this rising population change is the maturing of the baby-boomer generation, born

between 1946 and 1965. Montana, like other state and local governments, will need to address the issues relative to changing demographics. As Montana's population ages, issues relative to an economy that will be required to support these changes and the implications for medical and long-term care costs must be addressed.

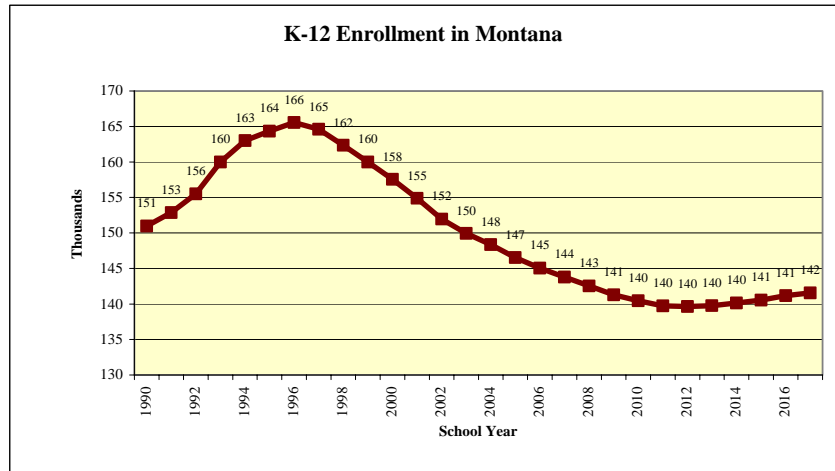
With a growing elderly population, the legislature will need to address how the working-age population can support a significantly older population. In addition to the associated costs of caring for the elderly, the level of income these individuals have and ultimately how much they will pay in taxes could have a substantial impact on state government finances. Given the expected dramatic changes in the age structure of our population, it is imperative the legislature begin thinking about these issues and how they may be addressed in the future.

In addition to our aging population, Montana has experienced a significant change in enrollment in our elementary and secondary public schools. As shown in Figure 20, Montana's total enrollment was in excess of 165,000 children in school year 1996. From this time forward, total enrollment is expected to decline to about 140,000 students by school year 2010. Beyond 2010, enrollment is estimated to increase, but at a fairly moderate rate. The significance of this change is the costs associated with funding our current public school system. Under current law, state expenditures for public schools are

primarily driven by the enrollment in each district. If enrollment declines, then the cost to fund education correspondingly declines. See page 119 for a discussion on the current public school funding lawsuit.

Figure 20

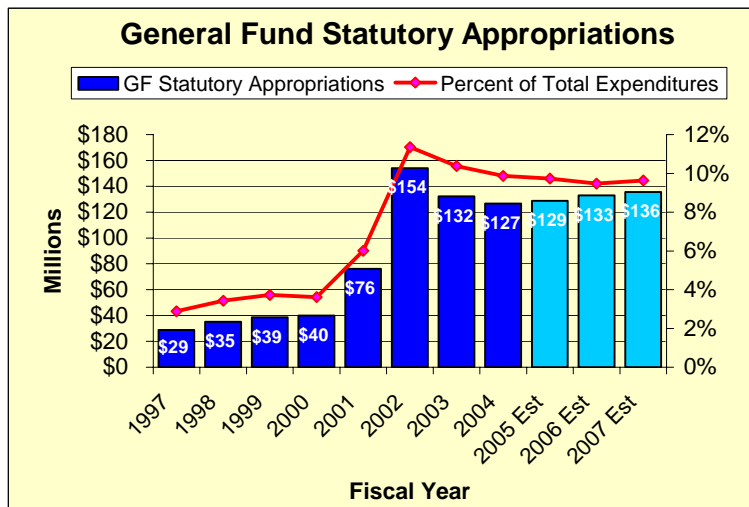
If the current public school funding formula continues to be enrollment driven, the cost of funding the public school system will begin to accelerate when the current enrollment trends reverse direction beginning in school year 2012. At an average cost of about \$3,500 per enrollee per year, small changes in enrollment can turn into significant funding increases in the future.



## GENERAL FUND STATUTORY APPROPRIATIONS

Statutory appropriations are a special kind of legislative appropriation. Unlike temporary appropriations that expire in two years (such as those in the general appropriations act), statutory appropriations are, as their name suggests, in statute and are not part of the biennial budgeting process. As such, they are not automatically reviewed by the legislature and are not subject to the priority setting process like temporary appropriations (such as those in HB 2). Since the appropriations are in statute, they remain in place until removed or changed by legislation. The legislature has made various attempts to not lose sight of these appropriations. In 1985, Representative Bardanouve sponsored legislation that required all valid statutory appropriations to be contained in a list in 17-7-502, MCA. That list provides statutory citations for each statutory appropriation. Although there are currently 73 sections listed, some sections have multiple statutory appropriations and each appropriation listed in statute could have multiple appropriations established on the state accounting system. Of these, 16 sections statutorily appropriate general fund. In 1993, Senator Grosfield successfully sponsored legislation (SB 378) that required a review of all statutory appropriations every two years by the Legislative Finance Committee. This requirement was removed by the 2001 legislature. Statutory appropriations are intended for only limited situations, and guidelines for the appropriateness for establishing them are specified in 17-1-508, MCA.

Figure 21



The significance of statutory appropriations lies not in the number of them, but rather in the amount of money authorized to be spent and if the authorizations still reflect the priorities of the current legislature. All statutory appropriations are available for the legislature to review, prioritize, and change if desired. Figure 21 on the left illustrates the amount of general fund spent through statutory appropriations from FY 1997 through FY 2004 and estimated amounts from FY 2005 to FY 2007. From FY 1997 to FY 2004, general fund expenditures from statutory appropriations increased \$98 million and, in FY 2004, comprised 10 percent of all

general fund expenditures. For the 2007 biennium, \$269 million general fund is expected to be spent with statutory appropriations. The initiation of the county entitlement program in FY 2002 (enacted by HB 124 in the 2001 session) accounts for most of the large increase shown in FY 2002. The increase in FY 2001 is largely due to payment of wildfire costs from the summer of 2000.

Figure 22 shows each individual general fund statutory appropriation that has been included in the general fund balance sheet for FY 2005-2007. The largest statutory appropriation of general fund occurs under 15-1-121, MCA. For the 2007 biennium, \$173 million is expected to be spent for entitlement payments to counties and tax increment financing districts. Other large statutory appropriations of general fund in the 2007 biennium include:



- \$35.8 million of transfers to retirement funds (Title 19, MCA)
- \$36.5 million to service the debt on bonding issues approved by past legislatures (17-7-502, MCA)
- \$12.1 million of coal trust interest (that is deposited to the general fund) to fund economic development programs (15-35-108, MCA)

**LFD  
Issue**
**County Entitlement Payments**

As stated above, \$173 million of general fund is projected to be spent in the 2007 biennium through statutory appropriations for entitlement payments to counties and tax increment financing districts. By statute, subsequent yearly amounts are automatically increased by a calculated growth factor. Because the money is appropriated in statute, it is not reviewed by the legislature as part of the biennial budgeting process. In essence, it and all other general fund statutory appropriations have priority funding over all general fund programs appropriated in the general appropriations act (HB 2). In times when the legislature must prioritize general fund programs to balance the budget, programs funded with general fund statutory appropriations should be considered by the legislature along with all other general fund programs.

As an alternative to funding counties and tax increment financing districts entitlement payments through statutory appropriations, the legislature could eliminate the statutory appropriations and provide appropriations for the program in HB 2. This would ensure that the program and the appropriations are reviewed and prioritized along with the other general fund programs in HB 2 each biennium, and that the level of funding reflects the current legislature's funding priorities.

**Governor's Emergency Appropriation**

Although the legislature has authorized the Governor's Office to spend up to \$16.5 million general fund in a biennium whenever emergencies or disasters are declared by the Governor (10-3-312, MCA), the executive budget does not include any anticipated expenditures from this statutory appropriation. In the past, the legislature also has not budgeted for expenditures from this authorization. Even though emergencies and disasters are difficult to predict, prudent budgeting requires that a portion of general fund be reserved for this contingency. Governor directed spending reductions or special legislative sessions may be required if events cause the expenditure of the entire \$16.5 million and nothing has been budgeted. The general fund balance projected by the Legislative Fiscal Division includes a \$14.9 million general fund reserve in each year of the 2007 biennium.

**LFD  
Comment**
**Executive Proposals**

The Department of Justice is proposing legislation to create three new general fund statutory appropriations to make payments mandated in statute. HB 559, enacted by the 2003 legislature earmarked certain vehicle fees, which are deposited to the general fund, to be paid to the highway patrol retirement fund (MCA: 61-3-527, 61-3-530, and 61-3-562). The estimated general fund impact is \$199,000 in the 2007 biennium. Because these fiscal impacts require passage of legislation, they are not included in the Legislative Fiscal Division's general fund balance.

Rather than creating three new statutory appropriations of general fund, the legislature could appropriate the general fund for this purpose in HB 2.

Figure 22

General Fund Statutory Appropriation Estimates

Fiscal Years 2005-2007

(in millions)

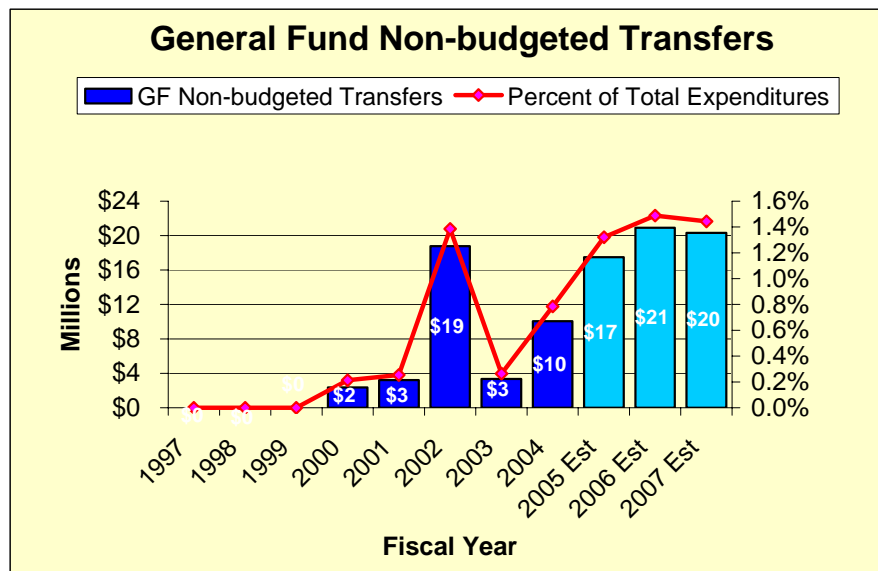
MCA Cite	Name	Fiscal 2005	2007 Biennium		Total
			Fiscal 2006	Fiscal 2007	
<u>Retirement</u>					
19-13-604	Prem Tax-Fire/Pol 19-13-604-SA	\$6.857	\$7.198	\$7.556	\$14.754
19-17-301	Prem Tax-Fire/Pol 19-17-301-SA	1.563	1.704	1.857	3.561
19-18-512(1)	Prem Tax-Fire/Pol 19-18-512-SA	0.245	0.250	0.265	0.515
19-19-305(1)	Prem Tax-Fire/Pol 19-19-305-SA	0.250	0.250	0.250	0.500
19-19-506(4)	Prem Tax-Fire/Pol 19-19-506-SA	0.021	0.021	0.021	0.041
19-9-702	Ins Prem Tax-Fire/Pol Ret 19-9-702-SA	<u>7.591</u>	<u>7.995</u>	<u>8.419</u>	<u>16.414</u>
Sub-total		\$16.527	\$17.417	\$18.368	\$35.784
<u>Economic Development</u>					
15-35-108(7)(b)(i)	Coop Developmental Center NMC	\$0.065	\$0.065	\$0.065	\$0.130
15-35-108(7)(b)(ii)	Add Vision 2005-SA	1.250	1.250	1.250	2.500
15-35-108(7)(b)(iii)	Research & Commercialization	0.000	3.650	3.650	7.300
15-35-108(7)(b)(iii&iv)	Economic Development	1.100	1.100	1.100	2.200
15-35-108(7)(b)(iv)	Reimbursement of TIFF-SA	<u>0.600</u>	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>
Sub-total		\$3.015	\$6.065	\$6.065	\$12.130
<u>Other</u>					
10-3-312(1)	Emergency Appropriations	\$0.020	\$0.000	\$0.000	\$0.000
15-1-111(6)	Local Asst-Prop Red PA-SA	4.865	3.613	2.408	6.021
15-1-121(3)	HB124 Combined Distribution - SA	81.331	83.711	86.292	170.003
15-1-121(6)	HB124 TIFF Distribution - SA	3.608	1.475	1.475	2.950
17-3-106(2)	Cash Management Interest-SA	0.009	0.009	0.009	0.019
17-6-101(6)	Banking Charges-SA	1.241	1.266	1.293	2.559
17-7-502(4)	TRANS Debt Service and Issuance Costs	0.000	0.000	0.000	0.000
17-7-502(4)	Transfer to Debt Service A/B Bond-SA	16.941	18.395	18.524	36.918
19-20-604	Teachers GABA 19-20-604-SA	0.685	0.699	0.720	1.419
19-3-319	Local Government PERD 19-3-319 -SA	<u>0.418</u>	<u>0.435</u>	<u>0.452</u>	<u>0.887</u>
Sub-total		\$109.119	\$109.604	\$111.173	\$220.777
Total		\$128.661	\$133.085	\$135.606	\$268.691

## GENERAL FUND NON-BUDGETED TRANSFERS

The Montana Constitution requires that all money paid out of the state treasury, except interest paid on the public debt, be done with an appropriation. However, the state treasury consists of numerous accounts and, with proper authorization, money may be transferred from one account to another without an appropriation. This results in less money in one account for the programs it funds and more in another. Like statutory appropriations, these transfers and their authorizations are in statute and are not part of the biennial budgeting process, yet they affect the amount of money available for the legislature to appropriate for specific programs. Because they are in statute, they remain in place until removed or changed by legislation.

Since FY 2000, increased amounts of money have been transferred out of the general fund to other accounts that fund non-general fund programs. As illustrated in Figure 23, this amount has grown from \$0 in FY 1999 to \$19 million in FY 2002 (about 1.4 percent of total general fund expenditures), and transfers are estimated to be over \$41 million in the 2007 biennium. These transfers reduce the amount of money in the general fund that is available for general fund programs and increase the amount available for other non-general fund programs. Figure 24 shows each non-budgeted general fund transfer that has been included in the general fund balance sheet.

Figure 23



### LFD ISSUE

#### MCA Title 15 Transfers

The largest group of transfers out of the general fund is the transfer of multiple vehicle and other fees that are initially deposited to the general fund (15-1-122, MCA). These fees are then earmarked and transferred out to multiple accounts to fund various state programs. The practice of transferring money out of the general fund escalated sharply with the enactment of HB 124 (entitlement payments to counties) in the 2001 session and the amount transferred has increased each biennium since. The practice is not conducive to good budgeting and unnecessarily complicates the revenue and disbursement processes. The legislature could eliminate this complicated and unnecessary practice and achieve the same results by implementing one of the following:

1. Earmark the applicable fees and provide for their direct deposit to the various program accounts. This bypasses the unnecessary step of first depositing the money in the general fund and then transferring the general fund to the various program accounts. Since the money is already being appropriated from these program accounts, current appropriations would not change.

**LFD  
Issues  
Cont.**

2. Continue to deposit the applicable fees to the general fund, but eliminate the transfers to the various program accounts. Since there would be no transfer revenue to appropriate from the various program accounts, appropriations from these accounts would be eliminated and replaced by general fund appropriations in the same amounts.

In both cases, the various state programs receive the same level of appropriation and the general fund transfers are eliminated.

**U.S. Mineral Royalty Transfer**

The next largest transfer, \$17.5 million in the 2007 biennium, involves U.S. mineral royalty revenue deposited in the general fund. Statute directs all the revenue to the general fund, but requires 25 percent of the amount to be transferred to the mineral impact state special revenue account. Money in this account is statutorily appropriated to eligible counties in which the minerals were extracted. Since the amount of U.S. royalties that the state receives has increased substantially since FY 2002 when the transfer first became effective, the amounts transferred have also increased. The legislature could eliminate this unnecessary practice and achieve the same result by implementing one of the following:

1. Deposit 25 percent of U.S. mineral royalty revenue directly to the mineral impact account and eliminate the unnecessary step of first depositing the money in the general fund.
2. Continue to deposit all U.S. mineral royalty revenue to the general fund, but eliminate the transfer and the mineral impact account. Statutorily appropriate general fund in an amount equal to 25 percent of the U.S. mineral royalty revenue deposited to the general fund directly to eligible counties.

**Primary Business Workforce Training**

Figure 24 shows no transfers from 39-11-203, MCA. HB 564 (enacted by the 2003 legislature) created the Primary Business Workforce Training Program, with the authorization to borrow up to \$10 million for use as grants from the Board of Investments INTERCAP loan program. Loan repayments are calculated on the number of new jobs created. Additional individual income tax revenue deposited in the general fund as a result of these jobs is transferred from the general fund to the Office of Economic Development: 1) 95 percent to repay interest and principal on the loan; and 2) 5 percent to assist the Department of Labor and Industry in reporting and analyzing data. Because there is some question on whether INTERCAP loans constitute state debt (a 2/3 vote was not required for the passage of HB 564), the Board of Investments will not provide funding for these loans until the legislature addresses the issue.

**LFD  
COMMENT****Executive Proposals**

The Revenue and Transportation Interim Committee is sponsoring legislation at the request of the Department of Revenue to correct oversights that occurred in the 2003 session that prevented the transfer of certain vehicle fee revenue from the general fund.

An oversight with the enactment of HB 559 resulted in the elimination of certain transfers of general fund vehicle fee revenue to the departments of Fish, Wildlife and Parks and Agriculture in the 2005 biennium. The proposed legislation is retroactive to January 1, 2005 and will reinstate the transfers for fiscal 2005. The general fund fiscal impact in fiscal 2005 is estimated to be \$851,000.

**LFD  
Comment Cont.**

SB 112, enacted by the 2003 legislature, imposed a new search and rescue fee on certain vehicles. Although the fee revenue is deposited to the general fund, a coordination oversight prevents the general fund revenue from being transferred to the state special revenue account. The legislation retroactively corrects this oversight. The estimated fiscal impact to the general fund is \$417,600 in FY 2005 and \$284,900 in the 2007 biennium. Because these fiscal impacts require passage of legislation, they are not included in the Legislative Fiscal Division's general fund balance.

Figure 24  
General Fund Non-budgeted Transfer Estimates  
Fiscal Years 2005-2007  
(millions)

			2007 Biennium		
Authorization	Name	Fiscal 2005	Fiscal 2006	Fiscal 2007	Total
<u>MCA Title 15 Transfers</u>					
15-1-122(1)	Adoption services	\$0.044	\$0.049	\$0.054	\$0.103
15-1-122(2)(c,d)	To the Department of Transportation	0.000	3.050	3.096	6.146
15-1-122(3)(a)(i)	Junk vehicle titling fee	0.740	0.776	0.646	1.422
15-1-122(3)(a)(ii)	Junk vehicle registration fee	1.044	1.085	1.110	2.195
15-1-122(3)(b)(i)	Weed fee OHV FILT	0.000	0.033	0.031	0.064
15-1-122(3)(b)(ii)(A)	Weed Vehicle <1 ton, logging, motor home	1.535	1.596	1.635	3.232
15-1-122(3)(b)(ii)(B)	Weed motorcycles & quadracycles	0.000	0.070	0.050	0.119
15-1-122(3)(b)(ii)(C)	Weed Vehicle permanent	0.062	0.064	0.066	0.130
15-1-122(3)(c)(i)	Watercraft decal fee	0.000	0.141	0.132	0.272
15-1-122(3)(c)(ii&iii)	Snowmobile decal fees	0.000	0.140	0.122	0.262
15-1-122(3)(c)(iv)	OHV decal fees	0.000	0.164	0.154	0.318
15-1-122(3)(c)(v)	Parks recreational fee	0.000	0.237	0.267	0.504
15-1-122(3)(c)(vi)	Watercraft FILT 20%	0.272	0.571	0.184	0.755
15-1-122(3)(c)(vii)	Vehicle registration fee for parks	0.000	2.744	2.810	5.554
15-1-122(3)(d)	Veterans license plates	0.176	0.183	0.188	0.371
15-1-122(3)(e)(i)	Highway patrol retirement	0.000	0.000	0.000	0.000
15-1-122(3)(f)	DOT senior transportation	0.340	0.674	0.358	1.032
15-1-122(3)(g)	Search & rescue surcharge	0.000	0.000	0.000	0.000
15-1-122(3)(h)	Vehicle registration fee for veterans	<u>0.646</u>	<u>0.676</u>	<u>0.577</u>	<u>1.253</u>
Sub-total		\$4.860	\$12.252	\$11.480	\$23.732
<u>Other Transfers</u>					
15-35-108	Research & commercialization	\$3.650	\$0.000	\$0.000	0.000
17-3-240	To the mineral impact account	8.959	8.665	8.834	17.499
39-11-203(5)	Loan costs for job credits *	0.000	0.000	0.000	0.000
39-71-2352(6)	Old state fund shortfall	Unknown	Unknown	Unknown	Unknown
53-20-171(2)	Development disability tax credit	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Subtotal		\$12.609	\$8.665	\$8.834	\$17.499
Total		\$17.470	\$20.917	\$20.314	\$41.231

\* The Board of Investments will not provide funding for the loans until the issue of state debt is addressed by the legislature.

## FUND BALANCE ADEQUACY/RESERVES

The severe revenue shortfalls that began in FY 2002 and continued into FY 2004 have been overtaken by a period of surging state revenues. This is apparent in revenue projections adopted by the Revenue and Transportation Interim Committee and in the sizable ending fund balance projected in the executive budget. However, there is no shortage of potential spending proposals, with school funding solutions at the top of most lists. In addition, much of the projected balance can be characterized as “one-time” revenues that, in theory, should not be spent on ongoing programs. The legislature needs to be aware of the tenuous nature of the surplus and keep in mind the need to maintain an adequate reserve.

Attaining general fund budget stability means more than setting appropriations equal to anticipated revenues, with a positive ending fund balance serving as a safety net. The adequacy of the state general fund balance can signify the difference between whether or not the state is forced to confront the unpleasant consequences of fiscal instability.

Montanans are all too familiar with the consequences of general fund balance inadequacy. In the late 1980's and early 1990's, the state general fund experienced a chronic deficit between revenues and disbursements. Much of the growth in the disbursement rate is a result of natural growth in expenditures due to inflation and/or caseload and enrollment increases, as well as supplemental spending for such contingencies as fire suppression. Revenue growth in the state has not always kept pace with expenditure growth. During the recent 2003 biennium, actual revenue growth was well below forecasts, primarily because of reduced income tax collection and lower interest rates, largely due to circumstances that could not be predicted when the 2003 biennium budget was being approved.

The Fifty-seventh Legislature adjourned from the 2001 regular session with a projected 2003 biennium general fund ending balance of \$54 million (2.3 percent of biennial appropriations). By the end of the first fiscal year, revenue collections for the biennium were \$153 million below legislative estimates. Even after Governor directed statutory spending reductions of \$23 million, a special session was necessary to achieve an acceptable ending fund balance reserve through an additional \$59 million in budget balancing actions. Revenues still remained unstable as the Fifty-eighth Legislature imposed additional reductions as it shaped the 2005 biennium budget, ending the session with a projected fund balance of \$46.2 million or 1.7 percent. As we are now aware, revenue collections are running well ahead of estimates, and the 2005 legislature faces a nearly unprecedented “surplus” as it prepares to craft the 2007 biennium budget.

Recognizing that budgetary imbalances and revenue swings can occur, the state can either take a reactive or a proactive approach. During the 1993 and 1995 biennia, the state held three special legislative sessions to deal with budget shortfalls. Another occurred in August of 2002. Although special sessions allow lawmakers the ability to address issues relative to revenues and expenditures, special sessions can cost the taxpayers approximately \$50,000 per day. The need for special sessions is also closely scrutinized by the national agencies that rate the state's debt. Rating agencies also use a state's general fund balance as a percent of revenues as one of the key financial indicators for credit analysis.

Again from a reactive stance, budgetary fluctuation can be temporarily resolved through spending reductions. In accordance with 17-7-140, MCA, the Governor can authorize spending reductions: “...in an amount that ensures that the projected ending general fund balance for the biennium will be at least

1 percent of all general fund appropriations during the biennium.” Essentially, the executive branch assumes control of the budget decision-making process by implementing and prioritizing spending reductions. Further, budgetary imbalances can be addressed only from one side of the equation -- expenditures. This means that legislative priorities could potentially get lost in the process.

Because of the cost and disadvantages of taking a reactive approach to budget imbalances, a more effective method may be to approach these issues proactively through provision of adequate fund balance reserves. National fiscal experts such as the National Conference of State Legislatures (NCSL) recommend a reserve fund balance of 3 to 5 percent of total appropriations or revenues. Because Montana’s budget is implemented on a biennial basis -- resulting in considerably more risk than an annual budgeting process -- the 3 to 5 percent should be applied to biennial totals. For Montana, with projected total general fund revenues of \$2.9 billion, a minimum 3 percent reserve equates to an \$87.0 million ending fund balance. The revenue volatility of recent years might suggest that an even higher reserve would be more prudent. The executive budget balance sheet shows an ending fund balance of approximately \$162.9 million, or 5.7 percent. However, the executive document recommends a fund balance of \$80 million, or 2.8 percent, recognizing that school funding and other unresolved issues may utilize part of the existing reserve.

The provision of an adequate general fund balance is essential to achieving a sound financial foundation. The level of fund balance reserves must be sufficient to offset the volatility of revenues and the potential for unforeseen expenditure increases. It is even more important since Montana is one of only three states that do not have a rainy day fund provision (although the legislature is expected to consider one or more “rainy day fund” bills this session). To this end, the legislature will again need to determine what amount of ending fund balance is sufficient to ensure budget stability.

The Legislative Finance Committee has submitted a committee bill to establish a “rainy day fund”, and several other bill drafts have been requested to establish such a fund. This is another tool to ensure fund stability, and would impact the decision as to what constitutes an adequate fund balance reserve. The opportunity to establish such a fund is enhanced by the current surplus, which provides an opportunity to put “seed money” in the fund. However, the placement of funds in such a fund will have to compete with other spending priority options that will be requested in the 2005 session.

## OTHER MAJOR FUNDS

### HIGHWAYS STATE SPECIAL REVENUE ACCOUNT DECLINING WORKING CAPITAL BALANCE

The 2005 Legislature is faced with a declining working capital balance in the highways state special revenue account. The account is projected to end FY 2007 with a working capital balance of \$19.1 million, which is down from a \$39.1 million balance at the end of FY 2004. Projections indicate that expenditures will exceed revenues by \$19.0 million in the 2007 biennium, with the imbalance continuing in future biennia.

Revenues to the account, which are from highway users fees primarily comprised of motor fuel tax collections and gross vehicle weight fees, are expected to increase at an average annual growth rate of 1.9 percent from FY 2005 through FY 2007. Revenue growth is not expected to keep pace with rising expenditure levels and inflationary increases associated with highway construction and related programs.

The inability of the U.S. Congress to pass long-term federal highway funding legislation provides uncertainty in the level of federal-aid funding for highways and impacts state matching funds of the account. The potential exists that higher levels of federal-aid for highways would be received and matching requirements of state funds would increase correspondingly. Although the account is not expected to feel the impact of increased federal funding immediately, increased state match requirements would add to future account instability. The inelasticity of program revenues has contributed to the chronic deficit spending imbalance of this program.

Deficit spending is a key contributor to the projected decline in working capital balance. Without actions to bring revenue and expenditure growth rates more in line with each other, the account is projected to continue to decline and could begin to impact the ability of the Department of Transportation to provide for the needs of the state highway infrastructure.

This issue is presented in more detail in the Department of Transportation budget discussion in Volume 3, General Government and Transportation Section; page A-100.



## RESOURCE INDEMNITY TRUST (RIT)

The following is a brief summary of the Resource Indemnity Trust account and related issues. For detailed information on the Resource Indemnity Trust, please see the agency summary section of the Department of Natural Resources and Conservation in Volume 4, of the Legislative Budget Analysis, page C-114.

Article IX of the Montana Constitution provides for the protection and improvement of the Montana environment and requests that the legislature provide adequate remedies for environmental protection from degradation. The Constitution specifically requires “all lands disturbed by the taking of natural resources shall be reclaimed”, and requires the existence of a resource indemnity trust (RIT) fund for that purpose, to be funded by taxes on the extraction of natural resources.

The Constitution further states, “The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000) guaranteed by the state against loss or diversion.”

The state constitution requires a trust, but does not require the trust to be funded. The legislature utilized certain natural resource extraction tax proceeds as a revenue source for the trust. In February of 2002, the Governor certified the balance of the trust had exceeded the \$100 million threshold. Consequently, the trust no longer receives revenue and those tax proceeds previously directed to the RIT were re-directed by the 2003 legislature.

### ***Accounts and Related Actual, Budgeted and Proposed Expenditures***

Figure 25 (2007 RIT) represents the four elements of the Resource Indemnity Trust and related taxes as defined by current statute. Each element has been shown to provide a breakdown of interest earnings and allocations.

### ***Resource Indemnity Trust (RIT)***

Section one shows the RIT estimated revenues and balances as provided by the Revenue and Transportation Interim Committee (RTIC) for FY 2005, FY 2006, and FY 2007. As of fiscal year end 2004, the RIT trust had a balance of \$100,002,390. The projected ending balance for FY 2005 is estimated at \$100,254,844 as a result of a \$252,454 transfer from the groundwater assessment fund, which had exceeded the statutory limit.

#### **LFD ISSUE**

Since the RIT balance is in excess of the constitutionally required \$100 million, excess trust balance is available for appropriation.

### ***RIGWA/Oil & Gas***

Section two provides the revenue estimates and details the statutory allocations of the resource indemnity ground water assessment (RIGWA) and applicable portions of the oil and gas tax. The allocations for RIGWA are as dictated in statute. The natural resource worker scholarship account has a maximum balance of \$150,000. Allocations to the account are based upon the amount needed to bring the account to the \$150,000 balance, which in FY 2005 was \$93,508. The applicable portions of the oil and gas tax are delivered to the funds on a percentage basis.

## ***Interest***

Section three provides the amount of interest generated by the RIT and the amounts that are allocated by statute for a specific purpose, 15-38-202, MCA. For the 2007 biennium, statute allocates \$9.8 million in interest for eight purposes.

Based upon FY 2005 expenditures, the environmental contingency account may not receive the total disbursement of \$175,000, as the fund is approaching the maximum balance of \$750,000.

Two changes in allocations occur for this biennium: 1) Future Fisheries receives an additional \$150,000 per fiscal year, bringing the annual allocation to \$500,000; and 2) the annual allocation for reclamation and development grants is increased from \$1.2 million per year to \$1.5 million per year.

After allocations are made, the amount available for further distribution by formula is \$2.1 million in FY 2006 and \$2.9 million in FY 2007, or \$5.0 million for the biennium. The amount available for further distribution in the 2007 biennium is \$1.1 million less than the \$6.0 million available in the 2005 biennium. This change is not due to interest earnings but rather to the changes in allocation that occur in the 2007 biennium.

## ***Expenditure Accounts***

Section four provides a breakdown of the related expenditure accounts. The table displays current fund balances, adjustments for revenues and executive appropriations, and the projected 2007 biennium ending balance. The executive appropriations section provides detail of program and department appropriations contained in the executive budget.

### **Fund balance shortfalls**

Two funds are expected to have a negative balance at the end of the biennium. The hazardous waste/CERCLA fund will receive \$1.3 million in revenues in the 2007 biennium, but \$1.4 million in appropriations are included in the executive budget. The projected 2007 fiscal year end fund balance is negative \$0.2 million. Legislation passed in the 2003 session allowed up to \$600,000 to be transferred from the orphan share to the hazardous waste/CERCLA fund, but must be returned when the fund balance increases. A \$200,000 transfer was made. The orphan share has a projected FY 2007 ending balance of \$6.3 million. However, the legislation providing transfer authority expires at the end of the 2005 biennium.

The environmental quality protection fund will receive \$1.5 million in revenues in the 2007 biennium, but \$2.2 million in appropriations are included in the executive budget. The projected 2007 fiscal year end fund balance is negative \$80,000. This balance could change if the amount of cost recovery is greater than estimated.

The renewable resource fund ends the biennium with a positive cash balance. In previous biennia the library commission received \$0.4 million and the conservation and resource development division of DNRC received \$0.6 million from the renewable resource fund. Funding for these activities has been diverted to the reclamation and development fund. Without this diversion, the renewable resource fund would have ended the 2007 biennium with a negative balance of \$0.8 million.

**LFD  
ISSUE**

There are two issues with RIT funding: 1) Statute regarding the renewable resource account and the reclamation and development account does not support the use of funds for non-program related activities; and 2) lack of overall oversight puts the stability of any one of the funds at risk.

**Statutory Uses**

According to 85-1-604, MCA, the renewable resource account is established for the renewable resource grant and loan program. Appropriations from the account are limited to grants and administrative costs of the grant and loan program. Figure 25 illustrates the proposed executive appropriations from the fund. The executive is proposing to fund the Water Court with \$1.5 million in renewable resources funds over the 2007 biennium. The functions of the Water Court are not related to the grant and loan program. A similar situation exists with the reclamation and development account. According to 90-2-1104, MCA, appropriations can be made for grants and the administrative costs of the grant program. The executive budget includes \$0.8 million for the natural resource information system through the Library Commission. The NRIS is not directly related to the grant program. The legislature may wish to do one of the following:

1. Adjust statute to allow expenditure for other purposes
2. Replace funding for all functions except those authorized by statute

**Lack of Oversight**

The resource indemnity trust interest, the resource indemnity ground water assessment tax, the metaliferous mine tax, and applicable portions of the oil and gas tax will provide \$26.6 million in revenues over the 2007 biennium to the related resource accounts. Local governments, two universalities and four state agencies rely on these resources to operate programs, repair water projects, and maintain data systems. However, there is no centralized legislative oversight of the accounts when appropriations decisions are made. RIT appropriations are made in three separate subcommittees, and other bills impacting the RIT generally do not go through subcommittee process. The lack of general appropriations oversight of these related accounts put at risk the stability of any one of the funds, as illustrated by two examples.

1. The executive budget contains a funding switch of \$1.0 million between the reclamation and development and the renewable resource accounts. The funding switch is made not for programmatic reasons, but because the fund balance in one account was not sufficient to fund all functions, and a sufficient fund balance exists in the other. (None of the activities in question are related to the administration of the grant and loan programs – see the first issue)
2. Legislation will be introduced to increase the flexibility of the orphan share account. The legislation also grants the ability to move \$600,000 in funds from the orphan share account to the hazardous waste/CERCLA account and the environmental quality protection fund. Both funds are predicted to have a negative balance at the end of the biennium. While this action could bring the accounts to a positive position, it does not address the issue of why the transfer is needed, or what an appropriate balance is in the orphan share account

The legislature may wish to consider the following options:

1. Establish a process by which one legislative entity can examine all HB 2 and other proposed legislation impacting one or more RIT accounts during the legislative session to establish an overall policy for the 2007 biennium
2. Request that a study be conducted during the interim of the RIT accounts, including sources, uses, and long-term policy, for the purpose of making recommendations to the 2007 Legislature

**Resource Indemnity Trust (RIT): Interest Earnings, and Related Expenditure Accounts  
2007 Biennium Projections (Including Executive Proposals and Appropriation Requests)**

**1**

<b>RIT Revenues (RATC estimates)</b>	<u>Fiscal 2004</u>	<u>Fiscal 2005</u>	<u>Fiscal 2006</u>	<u>Fiscal 2007</u>
Projected Beginning Balance FY 2005		\$100,002,390	\$100,254,844	\$100,254,844
<b>Fund Balance Allocations/transfers</b>				
Transfer from Groundwater Assessment (02289)		\$252,454		
Total Deposits/Legislative Changes		\$252,454		
<b>RIT Trust Balance</b>	<u>\$100,002,390</u>	<u>\$100,254,844</u>	<u>\$100,254,844</u>	<u>\$100,254,844</u>

**2**

	<u>Fiscal 2005</u>	<u>Fiscal 2006</u>	<u>Fiscal 2007</u>	<u>Biennium Total</u>
<b>RIGWA Tax</b>	\$1,229,000	\$1,176,000	\$1,323,000	\$2,499,000
<u>Statutory Allocations -- RIGWA</u>				
CERCLA Bonds Debt Service	\$0	\$160,000	\$320,000	480,000
Groundwater Assessment Account-direct (02289)	113,546	366,000	366,000	732,000
Reclamation & Development-50% of Remainder (02458)	431,500	318,000	312,000	630,000
Natural Resource Worker Scholarship * (2069)	93,508	13,508	13,508	27,016
Orphan Share Account- Remainder of RIGWA (02472)	337,992	318,492	311,492	629,984
<b>TOTAL RIGWA STATUTORY ALLOCATIONS</b>	<u>\$1,229,000</u>	<u>1,176,000</u>	<u>1,323,000</u>	<u>2,499,000</u>
<b>Applicable Oil and Gas Tax</b>	\$4,600,384	\$4,623,434	\$4,667,950	\$9,291,384
<u>Applicable Portion of Oil and Gas</u>				
Coal Bed Methane Protection - (02694) 1.23%	793,616	797,592	805,210	1,602,802
Reclamation & Development-(02458) 2.95%	1,903,384	1,912,921	1,931,190	3,844,111
Orphan Share Account - (02472) 2.95%	1,903,384	1,912,921	1,931,190	3,844,111
<b>TOTAL Oil and Gas STATUTORY ALLOCATIONS</b>	<u>4,600,384</u>	<u>4,623,434</u>	<u>4,667,590</u>	<u>9,291,024</u>

**3**

	<u>Fiscal 2005</u>	<u>Fiscal 2006</u>	<u>Fiscal 2007</u>	<u>Biennium Total</u>
<b>RIT Interest Earnings (RATC estimates)</b>	\$7,401,000	\$7,417,000	\$7,420,000	\$14,837,000
Priority Statutory Allocations of Interest				
Environmental Contingency Account (02107)**	0	(175,000)	0	(175,000)
Oil & Gas Prod. Damage Mitigation Account (02010)***	0	(50,000)	0	(50,000)
Water Storage Account (02216)	0	(500,000)	0	(500,000)
Groundwater Assessment Account-direct (02289) ****	(300,000)	(300,000)	(300,000)	(600,000)
MSU-Northern Statutory Appropriation (02272)	(240,000)	(240,000)	(240,000)	(480,000)
Fish, Wildlife, and Parks -- Future Fisheries (02022)	(350,000)	(500,000)	(500,000)	(1,000,000)
Renewable Resource Grant & Loan Program (02272)	(2,000,000)	(2,000,000)	(2,000,000)	(4,000,000)
Reclamation & Development Grants (grants) (02458)	<u>(1,200,000)</u>	<u>(1,500,000)</u>	<u>(1,500,000)</u>	<u>(3,000,000)</u>
Total Allocations	(\$4,090,000)	(\$5,265,000)	(\$4,540,000)	(\$9,805,000)
Amount Available for Further Distribution	\$3,311,000	\$2,152,000	\$2,880,000	\$5,032,000

Figure 25

4

**Related Expenditure Accounts  
(2007 biennium totals)****Further Distribution % of RIT Interest**

	Renewable Resource (02272) 30.0%	Reclamation & Development (02458) 35%	Haz. Waste CERCLA (02070) 26%	Environmental Quality Protect. (02162) 9.0%	Groundwater Assessment (02289)**** 0%	Water Storage (02216) 0%	Orphan Share (02472) 0%
Beginning Fiscal 2005 Fund Balance (SABHRS)	\$1,396,368	\$1,944,494	\$194,540	\$839,661	\$252,454	\$320,696	\$5,093,800
Continuing appropriations	(3,882,647)	(2,580,217)	(31,231)			(589,979)	0
Fiscal 2005 appropriations	(979,066)	(2,961,720)	(895,656)	(915,792)	(666,000)	0	(1,350,144)
Fiscal 2005 Adjustments	0	0	0	0	(252,454)	0	0
Fiscal 2005 revenues (RTIC, agency estimates)	<u>3,930,782</u>	<u>5,565,834</u>	<u>582,000</u>	<u>712,900</u>	<u>666,000</u>	<u>138,000</u>	<u>2,254,000</u>
Projected Available Fund Balance Beginning FY2006	\$465,437	\$1,968,391	(\$150,347)	\$636,769	\$0	(\$131,283)	\$5,997,656
<b>Revenues (RATC, agency estimates)</b>							
RIT Interest-direct	\$4,480,000	\$3,000,000			\$600,000	\$500,000	
RIT Interest-further allocation by above %	1,509,600	1,761,200	1,308,320	452,880			
RIGWA Proceeds		4,474,111			732,000		4,474,095
Metal Mines Tax (7%)		1,311,000					
Coal Tax & Interest (from 04011)	516,009						
STIP/Other Interest	20,000		4,000	6,000		37,500	70,000
Cost Recoveries				1,023,800			
<b>Transfers</b>							
Administrative Fees	14,000						
State-owned Project Revenue	-	-	-	-	-	240,000	-
Total Revenues	<u>\$6,539,609</u>	<u>\$10,546,311</u>	<u>\$1,312,320</u>	<u>\$1,482,680</u>	<u>\$1,332,000</u>	<u>\$777,500</u>	<u>\$4,544,095</u>
<b>Executive Appropriations</b>							
House Bills 6 and 7 Grants (Executive Recommended)	\$4,000,000	\$3,000,000					
House Bill 6-Emergency/Private Grants (Recommended)							
MSU-Northern (statutorily appropriated)	480,000						
UM-Bureau of Mines					\$1,332,000		
DNRC - Centralized Services	10,000	12,000					
DNRC-Conservation and Resource Devel. Division		1,630,243					
DNRC-Water Resources Division		107,428				544,600	
DEQ-Central Management		88,378	28,964				
DEQ-Planning, Prevention & Assistance			266,244				
DEQ-Enforcement		9,648					
DEQ-Remediation			47916	2,199,144			4,150,019
DEQ-Permitting & Compliance		3,243,521	1052358				
DNRCFlathead Basin Commission	16,002						
Judiciary-Water Court	1,533,510						
Library Commission-State Library Operations/NRIS		782,872					
House Bill 13 (executive pay plan estimate)	-	-	-	-	-	-	-
Total Appropriations	<u>\$6,039,512</u>	<u>\$8,874,090</u>	<u>\$1,395,482</u>	<u>\$2,199,144</u>	<u>\$1,332,000</u>	<u>\$544,600</u>	<u>\$4,150,019</u>
<b>Projected 2007 Biennium Ending Balance</b>	<b><u>\$965,534</u></b>	<b><u>\$3,640,612</u></b>	<b><u>(\$233,509)</u></b>	<b><u>(\$79,695)</u></b>	<b><u>\$0</u></b>	<b><u>\$101,617</u></b>	<b><u>\$6,391,732</u></b>

\* Amounts are deposited to the Natural Resource Worker Scholarship to bring the balance up to \$150,000

\*\* The governor must report on the expenditures from the environmental contingency account in the executive budget. Expenditures are statutorily appropriated.

\*\*\* Amounts are deposited to the oil &amp; gas production damage mitigation account to bring the balance up to \$200,000 (82-11-161,MCA). All money in the account is statutorily appropriated.

\*\*\*\* Amounts are deposited to the groundwater assessment account to bring the balance up to \$666,000.

Figure 25  
Continued

